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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1970.

No. 781

SEARS, ROEBUCK AND CO.,

AND

TERMINAL FREIGHT COOPERATIVE ASSOCIATION AND TERMINAL FREIGHT HANDLING CO.,
*Petitioners.*

JOSEPH H. SOLIEN, REGIONAL DIRECTOR OF THE FOURTEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,

AND

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
*Respondents.*

## PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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THE SUPREME-BARRISTER PRINTING COMPANY, CHICAGO

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TERMINAL FREIGHT COOPERATIVE ASSOCIATION AND TERMINAL FREIGHT HANDLING CO.,

*Petitioners.*

JOSEPH H. SOLIEN, REGIONAL DIRECTOR OF THE FOURTEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,

AND

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

*Respondents.*

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## PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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Petitioners Sears, Roebuck and Co., Terminal Freight Cooperative Association and Terminal Freight Handling Co., charging parties before the National Labor Relations Board, seek a writ of certiorari before judgment in the

court of appeals to review the Order of the District Court for the Eastern District of Missouri denying to the charging parties either the right to appear and participate as full party-litigants in that court, in a proceeding brought under Section 10(l) of the National Labor Relations Act, or even the right to intervene therein.

Petitioners seek this writ before judgment in the appellate court in view of (i) the likelihood of an imminent recurrance of the injury suffered as a result of the district court's Order; (ii) the delay which would result from awaiting the decision of the court of appeals which will not hear oral argument in the case until the Spring of 1971; (iii) the fact that the same issues involved here are currently before this Court in another pending case.

## OPINIONS BELOW.

The unreported Order of the district court below issued on July 8, 1970 (App. J, p. A 58).

The petitioners' appeals from this Order are currently pending in the Court of Appeals for the Eighth Circuit.

## JURISDICTION.

The Order of the district court denying to petitioners the status of "parties" under Section 10(l) of the Act or the right to intervene in such proceedings was issued on July 8, 1970.

An appeal of this Order was filed in the United States Court of Appeals for the Eighth Circuit by Sears, Roebuck and Co. on July 10, 1970, and by Terminal Freight Cooperative Association and Terminal Freight Handling Co. on July 16, 1970. These appeals are currently pending.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1) and Rule 20 of this Court.

## QUESTIONS PRESENTED.

(1) Whether charging parties before the National Labor Relations Board, whose charges give rise to the mandatory filing of the Regional Director's petition for injunctive relief under Section 10(l) of the National Labor Relations Act, possess the status of "parties" in the ensuing district court proceedings filed pursuant to their charges and on their behalf?

(2) Whether such charging parties may intervene in the district court proceedings brought pursuant to Section 10(l) of the Act and which result from the filing of their charges with the Board.

(3) Whether this Court should decline on the ground of mootness to adjudicate the merits of an appeal in which no immediate relief is required, but where the disputed issues remain unresolved, will result in recurring injury to the same and similar parties, will continue for the same reason to evade review, and will be fully and actively litigated by interested and adverse parties.

## STATUTE INVOLVED.

The relevant provisions of the National Labor Relations Act, as amended, § 61 Stat. 136, 73 Stat. 519, 29 U. S. C. § 151 *et seq.*, are set forth in App. U, p. A. 112.

## STATEMENT OF THE CASE.

This case originated from charges filed with the Board by petitioners herein, alleging that Respondent Union had violated their rights by subjecting them to unlawful secondary boycott activity proscribed by Section 8(b)(4)(i)(ii)(B) of the Act, 29 U. S. C. § 158(b)(4)(i)(ii)(B).

The Union commenced its picketing of Sears on June 9, 1970 and of Terminal[1] on June 10, resulting in the afore-

1. Petitioner Terminal Freight Cooperative Association is a non-profit shippers' association consisting of forty-five independent companies which receives less-than-carload and less-than-truckload shipments, consolidates such shipments into carload lots in order to

mentioned charges filed by Sears on June 10 and by Terminal on June 12, 1970. Following a preliminary investigation of the merits of these charges, as is required by Section 10(l) of the Act, Respondent Joseph Solien, Regional Director of the Board, on June 16, 1970, concluded that there existed reasonable cause to believe that Respondent Union was engaging in unfair labor practices, as charged, and that complaints of the Board should issue.

Although the terms of Section 10(l) explicitly provide that, upon making the described findings, the Regional Director "shall" petition a district court for injunctive relief, the Director ignored this mandatory direction and refused to seek such relief pending the conclusion of his unilateral settlement negotiations with Respondent Union.

Since petitioners continued to be subjected to Respondent Union's picketing, and since the Director persisted in his refusal to seek injunctive relief on their behalf, petitioners Sears and Terminal, on June 18 and June 19, 1970 respectively, filed a Complaint for Mandatory Injunction in the district court. This constituted only the first of a series of legal actions which petitioners, as aggrieved charging parties before the Board, were forced to institute as a result of this unlawful picketing, in order both to perfect and to protect their statutorily guaranteed rights. The instant appeal constitutes another in that series of actions.

Shortly after the petitioners filed their Complaint for Mandatory Injunction, on June 29, 1970 the Director filed his "Petition for Injunctive Relief Under Section 10(1)"

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secure the advantages of lower costs through large volume shipment, and reships such goods to members' plants at locations throughout the United States. Petitioner Terminal Freight Handling Company is a non-profit Delaware corporation engaged in the handling, consolidation and trans-shipment of freight as manager of the Association at more than forty terminals throughout the United States.

For ease of reference these petitioners jointly will be referred to as "Terminal" herein.

(App. A, p. A p. A 1), followed, on July 2, 1970, by the issuance of his "Order Consolidating Cases, Complaint and Notice of Hearing" (App. F, p. A 34).[2]

Upon the filing of the Director's injunction petition, these petitioners sought to clarify their status in the resulting district court proceedings. Accordingly, on June 30, 1970, Sears' counsel filed an appearance denoting Sears as a "party" and, on July 1, 1970, Terminal's counsel filed a "Motion to Appeal and Participate as Full Parties Litigant". (App. C, D and E, at pp. A 26, A 28 and A 30, respectively.)

Throughout this period, the Director had carried on unilateral settlement negotiations with the Union, resulting in a "Stipulation" which the Director's agents circulated to petitioners for their approval. (App. G, p. A 44.) The Director and the Union intended this Stipulation to serve in lieu of the injunctive relief for which the Director had earlier petitioned. To the end of achieving such an informal agreed settlement in lieu of the injunction which Section 10(1) commanded the Director to seek, the Director failed to seek a hearing on the petition which he had filed.

The petitioners—believing (i) that the remedial provisions of the Stipulation were inadequate; (ii) that they were entitled to a court-ordered injunction rather than an informal, privately negotiated, non-self-enforcing Stipulation; and (iii) that the direction in Section 10(l) that the Director "shall" seek injunctive relief meant more than that

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2. As a result of the filing of the Director's petition, Sears withdrew its Complaint for Injunction. Terminal, however, moved for a partial dismissal of its Complaint insofar as it sought to compel the Director to file for that petition, but amended its Complaint to seek a declaratory judgment of the propriety both of the Director's initial refusal to proceed and of the still-existing internal agency rule which dictated or permitted his refusal. This case is currently pending in the district court (70 C 300 (3)). Terminal's amended complaint is set out in App. B, p. A 11.

the Director, having filed a petition under legal duress, may thereafter ignore his petition as if it had never been filed at all—filed specific and detailed objections to the proposed Stipulation.[3]

On July 8, 1970, the district court disapproved the proffered Stipulation but held that the petitioners were not parties to the Section 10(l) proceedings and would not be allowed to intervene, although they were permitted certain lesser rights including the right to be informed of all actions taken in the case, to be present by counsel at all hearings, to keep the court advised of pertinent developments and to receive copies of all documents filed. The court also set the matter for hearing, on its own motion, for July 15, 1970. (App. J, p. A 58.)

The petitioners thereupon commenced preparation for that hearing as, in Terminal's case, for example, by preparing extensive Interrogatories to be served upon Respondent Union.

However, on July 9, 1970, representatives of the Director and the Union proffered an amended Stipulation to the district court judge in his chambers. (App. K, p. A 60.) The judge approved that Stipulation without the presence of the petitioners, without any advance notice to them that such a meeting was to be held, without affording them an opportunity to participate in the drafting of the document and without affording them an opportunity to state any further objections to it. Petitioners learned of the meeting and the court's approval of the amended Stipulation only after those events had transpired. Moreover, the court's approval of that Stipulation had the effect of can-

3. On July 7, 1970, Sears formally filed five written Objections and Terminal filed a "Motion to Interdict Entry of and Objections to Proposed Stipulation", by way of documenting their opposition to the terms of the Stipulation which was negotiated and drafted without their participation. (App. H and I, at pp. A 51 and A 54 respectively.)

celling the scheduled hearing of July 15, preventing petitioners from filing prepared Interrogatories and from arguing to and persuading the court that no relief other than the statutorily-specified injunction was appropriate either generally or specifically in this case. Finally, the court's action violated its own order of July 8 which guaranteed to petitioners the right to notice of all proceedings in the case and the right to participate therein, and violated petitioners' right, expressed in Section 10(l), to a hearing at which it could "appear by counsel and present any relevant testimony" in connection therewith.

Having circumvented its statutory duty to seek interim injunction relief under Section 10(l), the Board then sought to dispose of the underlying case by means of a "Settlement Stipulation" purporting to remedy the charged unfair labor practices. A document so entitled was submitted to the charging parties on about July 24, 1970, bearing the signatures of agents of both the Union and the Director. (App. N, p. A 68.) The charging parties opposed such a disposition of their charges on the grounds that they lacked adequate information to judge whether all the substantive violations had been remedied, that they had not been afforded any opportunity to participate in the negotiation and drafting of this proposed settlement, and that the document lacked any findings of fact such as are required under Section 10(c) of the Act and without which it would be impossible to determine whether any resumption of the Union's picketing would violate the presumed proscriptions of the settlement.

In order to prevent the Director's approval of the settlement over the charging parties' objections, on July 17, 1970 the charging parties filed a Complaint in the district court alleging that the Director had violated their rights under the Act and the Board's Rules and Regula-

tions by excluding them from settlement discussions and depriving them of essential facts in connection with settlement deliberations, and sought to enjoin the Director from approving any settlement or engaging further in settlement discussions without the informed participation of the charging parties. (App. Q, p. A 89.)

On July 30, 1970 the district court sustained the Director's motion to dismiss the cause for lack of jurisdiction. (App. R, p. A 98.) The charging parties filed an appeal of the district court's decision and sought a temporary stay of that decision from the Eighth Circuit Court of Appeals pending resolution of the appeal. Such a stay was granted on August 7, 1970 but, upon further consideration, was vacated on August 10.

On August 11, 1970 the charging parties filed in this Court an application for a temporary restraining order staying the district court's order and temporarily enjoining the Director. On August 19, 1970 this Court, by Mr. Justice Blackman, denied the application. (The gist of the parties' contentions are set out in Apps. S and T at pp. A 99 and A 104.)

In sum, the history of this case reveals a series of actions taken by the Board's agents and the inferior courts whose effect has been to deprive the charging parties of rights guaranteed them in Section 10(l) and of the benefits which Congress intended that Section to afford. First, the Director declined to petition for injunctive relief despite the mandatory duty imposed upon him to do so in aid of unlawfully picketed charging parties; second, the charging parties were neither recognized as "parties" nor permitted to intervene nor meaningfully permitted to participate in the district court consideration of the Director's tardily filed injunction petition; and third, the Director

refused to permit the charging parties to participate in the discussions and negotiations leading to the attempted and inadequate settlement of their meritorious charges filed with the Board.

The charging parties have sought judicial review of each of these denials. The first is currently pending in the district court; the second is pending in the Court of Appeals and is before this Court pursuant to the instant petition; the third is also now pending in the Court of Appeals.[4]

## REASONS FOR GRANTING THE WRIT.

### Introductory.

The instant petition marks the fifth occasion within the past two years on which this Court has been requested to determine the status and the rights which charging parties enjoy in proceedings authorized by or resulting from Section 10(l) of the National Labor Relations Act. In *San Francisco-Oakland Newspaper Guild, et al.* v. *Kennedy*, 393 U. S. 926, this Court declined to decide whether charging parties properly may be denied an opportunity to intervene in an appeal of a favorable decision rendered by a district court under Section 10(l); in *Sears, Roebuck and Co.* v. *Local 419, Carpet Layers*, 397 U. S. 655, this Court declined to determine whether charging parties properly may be denied a right to seek appellate review of an adverse district court decision when the Board declined to seek such review; and in *Terminal Freight Cooperative*

4. In his Consolidated Complaint of July 2, 1970, the Director scheduled a hearing on the merits of the charges which gave rise to each of these matters. However, the Director has on three subsequent occasions, and in all instances on his own motion, postponed the convening of this hearing which is currently set for October 19, 1970, apparently for the purpose of awaiting judicial resolution of the issues raised in these appeals.

*Association et al.* v. *Samoff*, 90 S. Ct. 2171 (1970), this Court declined to decide whether a district court properly may deny to charging parties either the right to participate as parties-litigant there or the right to be heard on their objections to the manner in which their substantive rights and interests are adjudicated.

Currently, there is another case pending before this Court on a Petition for Writ of Certiorari to the Ninth Circuit, *The Los Angeles Herald Examiner, et al.* v. *Kennedy* (No. 350, October Term 1970),[5] which seeks once again a decision as to whether charging parties have standing to appeal adverse district court decisions rendered pursuant to cases filed under Section 10(l) and whether they may intervene as parties in the appellate consideration of such adverse decisions.

Finally, the instant case presents the question as to whether charging parties may participate as "parties" in the district court disposition of cases resulting from their filing of charges with the Board, based upon injuries they suffered as a consequence of the violation of their statutory rights for which the statute, in Section 10(l), provides relief to them from a continuation or repetition of the legal wrongs which they suffered.

The foregoing summary plainly reveals that the problem of defining the rights and the status of charging parties in proceedings under Section 10(l) is both a serious and recurring one. The absence of guidance from this Court can only serve to promote expensive and time-consuming litigation as charging parties in such cases, unclear as to their rights and the level of participation to

5. The Chamber of Commerce of the United States has filed a brief *amicus curiae* in support of the petition for writ of certiorari filed by The Los Angeles Herald-Examiner. The petitioners herein believe that the arguments made in that brief equally support our own petition and adopt on our own behalf the contentions and conclusions of that brief.

which the protection of those rights may entitle them, will continue to seek judicial clarification.

However, apart from the merits generally of a resolution by this Court of a problem which would otherwise inevitably give rise to recurring disputes, certiorari is also sought because the decision of the district court below is inconsistent both with the demonstrable intent of Congress and related decisions of this Court.

Although petitioners' appeal of the district court decision below is now pending in the Court of Appeals for the Eighth Circuit, certiorari is sought before judgment of that court in view of the fact that the same issues presented here are already pending in this Court in *The Los Angeles Herald Examiner, et al.* v. *Kennedy*,[6] and that the merits of the matters at issue have already been extensively briefed to this Court in each of the cases mentioned above, thus assuring this Court's familiarity with these matters and obviating the need to await the Eighth Circuit's decision.[7]

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6. This Court has frequently granted certiorari before judgment of the courts of appeals where similar or identical issues of importance are already pending in the Court. *Hannah* v. *Slawson*, 361 U. S. 910; *United States* v. *Thomas*, 361 U. S. 950; *McCulloch* v. *Sociedad Nacional*, 372 U. S. 10, 12; *Hannah* v. *Larche*, 363 U. S. 420, 422, n. 3; *McElroy* v. *Guagliardo*, 361 U. S. 283; *Reid* v. *Covert*, 354 U. S. 1, 5; *White* v. *Mechanics' Securities Corp.*, 269 U. S. 283, 299; *Johnson* v. *U. S. Shipping Board*, 280 U. S. 320, 324-25; *Graham & Foster* v. *Goodcell*, 282 U. S. 409, 411-12, 415, n. 2; *Bolling* v. *Sharpe*, 344 U. S. 873; *Porter* v. *Dixon*, 328 U. S. 252, 254.

7. Petitioners are informed by the Clerk of the Eighth Circuit that the earliest date on which that court could hear oral argument in this case is the Spring of 1971.

The delay which would result in awaiting the decision of the Eighth Circuit constitutes an additional basis for granting the instant petition. When this Court granted certiorari in *Sears, Roebuck and Co.* (No. 476, October Term, 1969), it signified its awareness of the general importance of the issues presented there. This Court failed to reach the merits of the questions presented in *Sears* because of the intervening decision of the Board. Such a

### A. The Scheme of the National Labor Relations Act Evidences Congress' Intent That Charging Parties Constitute "Parties" in Proceedings Under Section 10(l).

In general, Section 10(l) constitutes a mandatory direction on the Board's agents to file a petition for injunctive relief in aid of aggrieved charging parties whenever it appears that there is reasonable cause to believe that the latter's charges are true that they have been victimized by certain illegal strikes, picketing or boycotts prohibited by Sections 8(b)(4) and 8(b)(7) of the National Labor Relations Act. Section 10(l) goes on to provide, in relevant part:

> "Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, *including the charging party,* shall be given an opportunity to appear by counsel and present relevant testimony . . ." (Emphasis added.)

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decision will almost surely also issue in the instant case by the time the Eighth Circuit renders its decision. In order to avoid that eventuality, however, petitioners have attempted, without success, to expedite the argument and briefing schedule in the Eighth Circuit. For example, Sears' notice of appeal from the denial by the district court of their right to participate as parties or to intervene was filed on July 10, 1970, two days following the district court's decision, and Terminal followed suit on July 16. (App. L and M, pp. A 64 and A 68.) The appeal was docketed on July 15, 1970. On July 21, 1970, Sears filed a motion for stay and expedited briefing schedules. (App. O, p. A 81.) Said motion was denied in all respects by the court on August 12, 1970, although the Board had made no objection to expedition. (App. P, p. A 87.) Petitioners once again attempted to expedite hearing before the court by seeking, on August 21, 1970, to join for briefing and argument all of the cases pending in the Eighth Circuit on the related issues . . . "at the earliest possible times". This motion was opposed by the Board and denied by the court on September 2, 1970.

Accordingly, the failure to grant this petition for writ of certiorari before judgment below will only perpetuate the inability of charging parties to secure a resolution of the important and recurring questions presented herein.

While Section 10(l) states nothing further regarding any participants' additional rights in the district court proceedings, and nothing whatever regarding any appellate rights, it is by now well established that the fact of Congressional silence does not, by itself, govern the question of their existence of non-existence. This Court has frequently found rights to exist in the face of Congressional silence when an analysis of the statutory scheme reveals an uncodified Congressional purpose.[8]

Analysis of Section 10(l), in conjunction with the statute of which it is a part, strongly suggests that Congress intended charging parties to enjoy the status of "parties" under Section 10(l), possessing all the rights and privileges of that status.

In fashioning the statute, Congress everywhere made the participation and interests of the charging party central to all proceedings authorized in the Act.

**1. Participation by the Charging Party.**

(a) In Section 10(b) Congress made the charge by an injured party the jurisdictional prerequisite to the filing of the initial Board complaint;

(b) Under the Board's construction of the Act, it has accorded the charging party the status of a full party litigant in all proceedings before the Board, without limitation as to the various stages of the proceedings involved;[9]

(c) The charging party is accorded the right to appeal

8. *Scripps-Howard Radio, Inc.* v. *F. C. C.*, 316 U. S. 4, 11; *U. A. W.* v. *Scofield (Fafnir Bearing Co.)*, 382 U. S. 205; *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U. S. 150; *Barlow* v. *Collins*, 397 U. S. 159.

9. Section 102.8 of the Board's Rules and Regulations and Statements of Procedure, Series 8, as amended, defines those who shall be deemed a "party" before it and includes in that group ". . . any person filing a charge or petition under the act, . . ."

adverse decisions of Trial Examiners to the Board, in Section 102.46(a) of the Board's Rules;

(d) The charging party is accorded the further right to seek, after issuance of the Board's order, a reopening of the hearing, rehearing, or reconsideration; Section 102.48(d) of the Board's Rules;

(e) The charging party is deemed a "person aggrieved" within the Congressional intent of Section 10(f), and thus entitled to invoke judicial review of final orders of the Board if the Board refuses any of the relief sought by the charging party. (*Albrecht* v. *N. L. R. B.*, 181 F. 2d 652 (CA 7, 1950) and cases there cited);

(f) Just as a charging party independently may seek appellate review in all cases where he was unsuccessful before the Board, similarly, he may participate as a full party in the appellate review of cases where he was successful. (*U. A. W.* v. *Scofield, supra*);

Thus, by filing a charge the charging party becomes a full party before the General Counsel in the investigative stage, before a Trial Examiner after Complaint has issued and with full appellate rights, before the Board on review of the Trial Examiner's decision, in the appellate courts after the Board's decision, and with the right independently to seek certiorari from this Court.

It is against this background that the district court below adopted the Board's argument that Congress' failure *specifically* to label charging parties as "parties" in district court proceedings brought by the Board establishes Congress' intent that they should not possess that status there; although they do possess it for all other purposes, whether expressly provided by Congress or not, in all other proceedings authorized in the Act.

**2. Recognition of the Interests of the Charging Party.**

Not only does the Act accord to charging parties the status of full "parties" in all proceedings before the Board, and clothe them with all the procedural safeguards customary to that status including the right to seek review at all levels of those proceedings, but the Act also recognizes that the rights which are thus protected include the charging parties' private or parochial rights and interests. One of the principal holdings in *U. A. W.* v. *Scofield, supra,* was precisely the proposition that the Act recognizes and enforces the private rights of aggrieved parties, and not merely generalized "public rights". Thus, the right to be free of the effects of an unlawful secondary boycott, while it is a right which the Board enforces in the public interest, is also a private enforceable right of the aggrieved victim of that boycott.

One of the means by which the Act affords relief from the effects of unlawful boycott activity is the provision for injunction found in Section 10(l). Hence, to say that the Act enforces private rights means that there is a private right to the relief provided in Section 10(l). However, there would be no point to recognizing the distinction between a private and a public right if the private beneficiary were not accorded a role separate and independent from the Board in securing and protecting it.

The nature of that role is only consistent with "party" status. This result follows from the fact that such a status is conferred upon charging parties for every other purpose and in every other respect under the Act. It follows from the inescapable conclusion that the private rights protected under Section 10(l) are as significant as any others recognized by the Act and for whose protection and

enforcement party status is conferred.[10] And it follows by implication from the terms of Section 10(l) itself.

Manifestly, the enumerated rights of participation granted charging parties in Section 10(l) exceed those associated with the status of an *amicus curiae*. An *amicus* is not entitled to participate actively in the development or introduction of evidence, or to raise objections, or to make argument during the course of the litigation; he is limited instead, and only with the Court's permission, to oral argument or the filing of briefs *after* the record is made. However, the express and necessarily implied provisions of Section 10(l) permit charging parties, without need of the court's permission, to be represented by counsel throughout the proceedings, to call and cross-examine witnesses, to offer contentious evidence, to introduce documentary and other relevant matter, to make and respond to oral argument and to file briefs. In exercising these rights the charging parties not only create the record which will govern their destinies in the district court, but they also narrow the issues and shape that record for appellate review. Were the statute intended to relegate charging parties to the status of *amici*, then their role would not have been expanded to permit such full and active participation as a matter of right.

Congress' intent to afford charging parties under the Act the full participatory role exercised only by "parties" is further evidenced by what Congress provided in the Judicial Review Act, 5 U. S. C. §§ 103-42.

The latter statute, which purported to import the pro-

10. The fact that Congress imposed a *mandatory* duty on the Board to enjoin the unlawful strikes and boycotts which constitute the subject matter of Section 10(l) proceedings, whereas the Board was merely given the *discretionary* power, in Section 10(j) to seek injunctive relief against all other types of unfair labor practices, reveals Congress' view of the relative significance of the private rights protected by Section 10(l).

cedures of the National Labor Relations Act into the schemes of other Federal agencies, contains the following relevant provisions in § 1038:

> "The agency, and any party or parties in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as *parties* thereto on their own motion and as of right, and be represented by counsel in any proceedings to review such order . . ."
>
> "The Attorney General shall not dispose of or discontinue said proceeding to review over the objection of such *party or intervenors* may prosecute, defend, or continue said proceeding unaffected by the action or non-action of the Attorney General therein." (Emphasis added.)

In short, if Congress had not intended charging parties to function as "parties" in proceedings under Section 10(1), then they would not have granted them rights under that Section such as only "parties" can exercise and which they may exercise as "parties" in pursuance of their private interest for all other purposes under the Act.

**B. Whether or Not Charging Parties are Conferred "Party" Status Under Section 10(1), They Have a Right to Intervene in all Proceedings Related Thereto.**

**1. The Right of Charging Parties to Function as "Parties" Under Section 10(1) Through Intervention is Established By Analogy to Their Standing to Secure Appellate Review.**

Respected scholars and courts have expressed the view that interests which are adequate to confer standing to seek judicial review are also adequate to confer the right to participate as parties in the proceeding from which review may be sought. Professor Davis has concluded that:

> ". . . the problem of right to intervene in administra-

> tive proceedings is closely related to and in some measure governed by the elaborate body of law concerning standing to challenge and to enforce administrative action."[11]

This view has found judicial approval, for example, in the Court of Appeals for the District of Columbia Circuit:

> "Cases concerning the question of standing [to seek review] have been used interchangeably in resolving questions of standing to intervene. Except for the adjustments necessary for assuring the manageability of administrative proceedings, the criteria for standing for review of agency action appear to assimilate the criteria for standing to intervene." (Footnote citations omitted.)[12]

The conclusion stated in the quoted excerpts, while addressed specifically to status in and the review of administrative proceedings, should not be limited to such proceedings since the logic which supports that conclusion has universal applicability.

The criteria for determining when standing to seek review exists, have recently received extended attention from this Court in *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U. S. 150 (1970) and *Barlow* v. *Collins*, 397 U. S. 159 (1970). The tests for determining such standing were stated by this Court as follows:

(1) "whether the plaintiff alleges that the challenged action has caused him injury in fact, economic or otherwise" and

(2) "whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the stat-

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11. I DAVIS, ADMINISTRATIVE LAW TREATISE § 8.11 at 564 (1958).

12. *The National Welfare Rights Organization, et al.* v. *Finch, et al.* (nos. 23,787, 23,890, CA DC, decided June 9, 1970), slip opinion, pp. 13-14.

> ute or constitutional guarantee in question." (*Data Processing Service, supra,* 397 U. S. 150 at 152, 153.)

As judicially interpreted and clarified, an injury of any kind in fact to any person or group which is the beneficiary of the statute under which the plaintiff raises his claim is sufficient to confer standing to seek review, unless the statute expressly or by necessary implication provides otherwise.[13]

Whenever a litigant's interest in the result of a suit is sufficient to permit him to obtain appellate review of an adverse result, then that interest should also entitle him to the fullest participatory role in the conduct of the suit, whether it is an administrative or a judicial proceeding.

> "The right of judicial review cannot be taken as fully realized, however, if appellants are excluded from participating in the proceeding to be reviewed."[14]

It follows, therefore, that if petitioners herein have standing to review the merits of an adverse decision rendered in a district court proceeding under Section 10(l), then they are entitled to function in that district court proceeding as "parties", through intervention if necessary, in

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13. The fact that Congress may not *expressly* have conferred standing on the group of which the complainant is a member is not controlling. Standing results from the satisfaction of the two stated criteria, in reliance upon the evidence of Congress' intent which is afforded by the Administrative Procedure Act, 80 Stat. 392, S. U. S. C. § 701 *et. seq.*, in which Congress provided, in § 702:

> "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."

See also *Barlow* v. *Collins, supra,* 397 U. S. at 164-5; *The National Welfare Rights Organization, supra.*

14. *The National Welfare Rights Organization, et al., supra,* slip opinion, p. 21.

order to protect their vital interests and avoid any subsequently reviewable injury.

The application to the facts of this case of the tests defining standing to seek review reveals that the petitioners should have been permitted by the district court below to intervene and participate as full party-litigants even if, in the court's view, they did not affirmatively possess the status of "parties" under Section 10(l) in the proceedings there: Section 10(l) affords relief to them from violations of their right to be free of unlawful secondary boycott activity; an adverse decision by the district court in refusing to grant relief, or in granting lesser relief then that initially sought by the Director and subsequently urged by petitioners would clearly constitute an injury to interests for whose very protection Section 10(l) was enacted.

In fact, by approving the Director's and Union's proferred Stipulation in lieu of granting injunctive relief pursuant to the then pending petition, the district court did inflict such injury. The Stipulation, which was approved over the charging parties' objections, was not an adequate substitute for the statutorily-guaranteed right to injunctive relief. Whereas the granting of an injunction after a hearing requested by the charging parties would have the significant deterrent effect of subjecting a violating party to proceedings in contempt, the Stipulation had no such deterrent effect. That Stipulation constituted only an agreement not to engage in secondary boycotts which, if violated, permitted the Board, when and if it was able and disposed, to secure from the district court an *ex parte* restraining order. Such an order, pursuant to the express terms of Section 10(l), would expire after five days. For any further relief, a full hearing is required with notice and full participatory rights guaranteed to all parties.

Thus, the resumption of unlawful boycott activity by the Union would not have subjected it—nor would such a resumption subject it now—to contempt but would only have entitled it to a full hearing whose conclusion could only have yielded precisely that injunction to which the charging parties had claimed themselves to be entitled from the outset.[15]

Apart from the delays and the absence of genuine deterrent effect inherent in this procedure, the district court's failure to recognize the charging parties' "party" standing under Section 10(l) yielded further damage to their legitimate interests. Pursuant to the Stipulation actually approved by the district court only the Board was empowered to petition the court for relief should the Union resume its unlawful conduct. However, had the district court acknowledged the charging parties' status as "parties", then those charging parties could have acted unilaterally to bring to the court's attention any subsequent resumption of the unlawful conduct which caused the Board to file for injunctive relief in the first instance and without the delays inherent in the administrative process which traditionally inhibits the Board's ability to move with equivalent dispatch. Moreover, the Stipulation approved by the court failed to set forth any findings of fact giving rise to the prohibitions contained therein, creating a needlessly difficult problem in determining whether a resumption of picketing would in fact violate any such prohibitions.

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15. Nor has the Stipulation succeeded in resolving any disputed contentions. The district court rejected the initial Stipulation proposed in the Section 10(l) proceeding because the union insisted on its right to picket these petitioners; the Board's Complaint alleged all such picketing to be unlawful. The Stipulation as finally approved did not incorporate the Board's view; rather, it was silent on the question as to whether, and under what conditions, the Union might engage in such picketing in the future. Therefore, instead of defining both parties' rights and limitations, the approved Stipulation finesses that all-important problem and invites future disputes.

Nor are these matters of merely academic interest today, for the Union may at any time resume its picketing of these neutral charging parties pursuant to any current or future dispute with the same primary employer. The fact that a contract was executed between the primary and the Union during the course of the litigation below does not warrant the conclusion that the Union will have no further disputes with that company—as, for example, in the interpretation and enforcement of that contract—and that the Union will not seek once again to apply pressure to the primary by picketing these neutral charging parties. The real possibility of such a resumption, coupled with the inadequacy of the remedy afforded by the Stipulation, further evidences the injury to the charging parties which has resulted and does result from the erroneous decisions of the district court which the instant petition for writ of certiorari seeks to review.

Thus, whereas Section 10(l) requires the mandatory seeking of injunctive relief none was sought or obtained, all over the objection of petitioners who were unable to make an adequate record on their own behalf, who were neither present when the Court approved the Stipulation nor even on notice that the court was then considering such approval, and who had not even been afforded the opportunity to examine the document prior to its approval by the court, all in violation of the rights granted them in Section 10(l) and as a consequence of being denied the right to participate as parties or to intervene.

Accordingly, under the tests of *Data Processing Service* and *Barlow, supra,* that standing to seek review follows from (i) an injury to a plaintiff, (ii) sustained pursuant to an alleged misapplication of a statute under

which plaintiff raises his claim, petitioners herein have standing to review the decision of the district court.[16] And pursuant to authorities holding that the possession of that standing confers on such plaintiffs the right to participate as party-litigants in the proceedings ultimately to be reviewed,[17] petitioners should have been accorded that right in the district court below.

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16. While the question of the right of charging parties to review the merits of district court decisions rendered under Section 10(l) has not been definitively adjudicated, the existence of such a right appears to follow necessarily from this Court's decisions in *Data Processing Service* and *Barlow*. The only contrary appellate court result was expressly vacated by this Court in *Sears, Roebuck and Co.* v. *Carpet Layers Union, supra.* See also *United Steelworkers* v. *N. L. R. B.*, 376 U. S. 492; *International Union of Mine, Mill and Smelter Workers* v. *Eagle-Picher Mining & Smelting Co.*, 325 U. S. 335.

The Norris-LaGuardia Act, 29 U. S. C. A. § 107, does not constitute a bar to such review. The proscriptions of that Act were not designed to affect judicial review of a case already properly lodged in the lower courts.

> "This measure was intended to curb the abusive power registered by certain federal judges in the promiscuous issuing of injunctions arising out of labor disputes. It has application only to the inferior federal courts of the nation, and limits the jurisdiction and power of those inferior federal courts." (Rep. Sweeney, 75 Cong. Rec. 5502.)

As related to Section 10(l) of the National Labor Relations Act, the inapplicability of Norris-LaGuardia to the question of review is established by Section 10(h) of the Labor Act which specifically exempts Norris-LaGuardia from all proceedings authorized under any of the subsections of Section 10. See also *Retail Clerks Union* v. *Food Employers Council*, 351 F. 2d 525 (CA 9, 1965), and *Houston Insulation Contractors Assn.* v. *N. L. R. B.*, 339 F. 2d 868 (CA 5, 1964).

17. *American Communications Association* v. *U. S.*, 298 F. 2d 648, 50-1 (CA 2, 1962); *National Welfare Rights Organization et al. supra;* DAVIS, ADMINISTRATIVE LAW TREATISE, *supra; In re Keystone Realty Holding Co.*, 117 F. 2d 1003, 1005 (CA 3, 1941); *Gleeson* v. *Carr*, 219 F. 2d 64, 67 (CA 9, 1955); cert. den. 350 U. S. 827; *Ashbacker* v. *F. C. C.*, 326 U. S. 327.

**2. Charging Parties' Right to Intervene in Proceedings Under Section 10(l) Also Derives from This Court's Decision in UAW v. Scofield (Fafnir Bearing Co.)**

The district court's decision below refusing to permit petitioners, charging parties before the Board, to intervene in proceedings under Section 10(l) is in conflict with this Court's decision in *Scofield.*

In *Scofield,* this Court argued generally for the fullest participation by charging parties in the judicial consideration of cases initiated by their charges with the Board. Although the precise question involved there related to the right of successful parties before the Board to intervene in review proceedings of final Board orders in the appellate courts, the rationale of the decision applies as well to intervention rights in the district court. The same "private interests" are at stake in both; the same possibility of injury to those vital interests exists in both. While in both tribunals, the charging parties' interests are represented by the Board's agents, nonetheless, just as the Board's presence and representation does not exclude the exercise by charging parties of an *independent* role in appellate deliberations, so also the same representation should have no greater effect in the district court when comparable rights and potential injuries are involved. Moreover, the advantages which, according to *Scofield,* accrue to the process of judicial deliberation through permitting intervention in enforcement proceedings in the appellate courts, apply as well to Section 10(l); these consist of evolving the fullest record for review, simplifying and clarifying the issues, and, in general, placing the matter before the court in the best posture for securing a thoughtful and encompassing decision.[18]

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18. The applicability of *Scofield* to district court proceedings finds support from Professor Jaffe:

"If the statute allows a party to appeal from an adverse

In brief, this Court's decision in *Scofield*, that the Board does not have *exclusive* authority to represent and protect the particular and private interests of the charging parties applies as a matter of logic to all proceedings in all tribunals where those interests are involved and require informed and interested protection.

Finally, apart from the fact that, by refusing to permit intervention by the charging parties, the district court below ignored the logic of this Court's *Scofield* decision, it also erred in failing to apply Rule 24(a)(2) of the Federal Rules of Civil Procedure. This Rule provides:

> "*Intervention of Right.* Upon timely application, anyone shall be permitted to intervene in an action . . . When the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

In rejecting the Board's claim in *Scofield* that it should function as the charging parties' sole representative, this Court established the proposition that the charging parties' private interests which the Act recognizes and protects are not "adequately represented" by the Board. It follows, therefore, that Rule 24(a)(2), which this Court applied by analogy to appellate proceedings, should directly have been applied by the district court below in permitting the charging parties to intervene there.

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Board decision why not from an adverse judicial ruling? I am not a friend to loose intervention practices, to practices which threaten to encumber administrative hearings and judicial review. But the interest of a charging party—as the statute itself makes clear—is central to the whole proceeding. To allow intervention merely accords to that interest a customary protection." Jaffe, *Judicial Control of Administrative Action*, p. 545 (1965).

### 3. The Authorities.

In general, courts which have dealt with the question of the status of charging parties under Section 10(l) are in disharmony.

Whereas the Ninth Circuit, in *The LosAngeles Herald-Examiner* case now pending in this Court, held that charging parties lacked standing to seek a stay of a district court's dissolution of a Section 10(l) injunction, or to intervene in the Board's efforts to secure such a stay, the Fifth Circuit held to the contrary in *Houston Insulation, supra.*

In *Henderson* v. *International Union of Operating Engineers, Local 701,* 420 F. 2d 802 (CA 9, 1969), the Ninth Circuit concluded that the successful charging party in a 10(l) proceeding lacked standing to constitute an "appellee" in the court of appeals and was relegated to the status of *amicus curiae.* However, the court's analysis of Section 10(l) appears to be inconsistent with its conclusion. At footnote 2 of its decision the court stated:

> "Under [Section 10(l)], *any* person involved in the charge is entitled to appear in the district court by counsel and to present relevant testimony. If the order entered by the district court aggrieves *any* such party, it undoubtedly has the right to appeal." (Emphasis added.)

Thus the court appears to hold that while a successful charging party may not intervene in an appeal of that successful result, if he loses in the district court then he may appeal the unsuccessful result himself. Such a decision is, apart from its logical infirmity, totally inconsistent with this Court's holding in *Scofield, supra.*

And in *San Francisco-Oakland Newspaper Guild* v. *Kennedy,* 404 F. 2d 37 (CA 9, 1968), cert. den. 393 U. S. 926, the Ninth Circuit similarly held that a successful charging

party could not intervene in the appellate review of a Section 10(l) proceeding. That decision, too, appears to be in conflict with *Scofield,* with the Second Circuit's decision in *McLeod* v. *General Electric Co.,* 366 F. 2d 847 (CA 2, 1966), and with various district courts which have found the right to intervene to be part of the scheme of 10(l). See *Kaynard et al.* v. *Amalgamated Meat Cutters and Butcher Workers of North America, AFL-CIO* (D. C., E. D. N. Y. No. 69 C 1597, 62 LC ¶ 10750 (1970)); *David* v. *Hotel and Restaurant and Bartenders International Union, et al.* (D. C. Okla., No. 66-68, 1966) (unreported but described in the Thirty-first Annual Report of the N. L. R. B., at 155-6); and *Penello* v. *Plumbers Local Union No. 5,* 41 LRRM 2269 (D. C. Va. 1957):

> "Section 10(l) of the Act plainly authorizes participation by the charging party. Intervention is necessary to implement this right." (Citations omitted.)

The principal judicial authority in the interpretation of Section 10(l) is an earlier Ninth Circuit decision, *Retail Clerks Union, Local 137* v. *Food Employers Council, Inc.,* 351 F. 2d 525 (CA 9, 1965). The pre-eminence of this decision derives not only from the fact that its analysis is much more detailed than that of any other decision on the subject, but also from the fact that its merits were specifically approved by this Court in *Scofield.*

The question before the Court in *Retail Clerks,* as it is here, concerned the extent and the nature of the rights possessed by charging parties pursuant to Section 10(l) in the district court proceedings to which their charges gave rise.

In Retail Clerks, pursuant to an appropriate charge filed with him and his investigation thereof, a Regional Director filed a petition in a district court for a temporary injunction under Section 10(l) to prevent a union from enforcing

an alleged "hot cargo" agreement. Thereafter, instead of pursuing his pending petition for injunctive relief, the Regional Director executed a Stipulation with the offending union according to which the latter would cease its alleged unlawful conduct. The Regional Director filed this Stipulation in the district court and sought its approval by that Court in lieu of injunctive relief. The charging parties, however, objected to the approval of the Stipulation and urged the court to grant injunctive relief pursuant to the Regional Director's pending petition.

Thus the facts of *Retail Clerks* mirror those in the instant proceeding. The district court in *Retail Clerks,* however, recognized the charging parties' right to an effective hearing on their objections to the Stipulation, unlike the district court below. After hearing the evidence, that court granted the injunction as the charging parties requested and over the objection of the Regional Director. The union and the Regional Director then appealed from the order granting the injunction.

In his appeal, the Regional Director contended, *inter alia,* that the private charging parties lacked standing either to urge the granting of injunctive relief under Section 10(l) or to oppose the Regional Director's modified request for relief in the district court.

With respect to the Regional Director's first contention, the Court held that while only the Regional Director may *initiate* suits for injunctive relief pursuant to the mandatory duty imposed upon him by Section 10(l) whenever he has reasonable cause to believe that one of the sections enumerated therein has been violated, that once he has done so, no statutory provisions or policy inhibits the charging parties' *right* to urge the granting of injunctive relief. So long as the urging of the charging parties is consistent with the facts, theories and relief sought in the petition, they may actively *support* it despite any sub-

sequent attempted change of position by the Regional Director. The distinction between "initiate" and "support" was found to be critical. Accordingly, the Ninth Circuit held that district courts may grant injunctions at the urging of charging parties and over the objection of the Regional Director, in cases under Section 10(l):

> ". . . where the charging parties did not petition the court independently or for relief different than that sought by the Regional Director, *but merely supported the original petition for injunctive relief requested by the Regional Director.*" (Emphasis added.)

In the instant case, as well as in the *Retail Clerks* case itself, the charging parties' objections to the Stipulation proposed by the Regional Director were in "support" of the "original petition for injunctive relief requested by the Regional Director." Hence their efforts constituted a legitimate exercise of rights in aid of a legally permissible objective, according to the *Retail Clerks* test.

The Regional Director's second appellate contention, in which he attacked the charging parties' standing to object to his decision to seek a lesser remedy than an injunction despite the pendency of his petition, was found to be equally non-meritorious. The Ninth Circuit expressly held the language of Section 10(l), in which charging parties are guaranteed the right to notice, to participation by counsel, and to an equal role in the development of relevant evidence in district courts, as sufficient to confer such standing. Moreover, the court reached the same conclusion less directly when it stated that district courts should grant appropriate relief in injunction suits under Section 10(l) whether or not the Regional Director persists in seeking such relief after he files his petition. However, if the Regional Director does not seek the injunction the district court cannot grant it *sua sponte*. It follows, therefore, that charging parties must have standing to urge such relief independently of the Regional Director if the district court

is to have an option to grant it in the event of the Regional Director's change of position.

In summary, the Ninth Circuit's decision in *Retail Clerks* constitutes indistinguishable precedent for the propositions that charging parties in cases under 10(l) have the right to be heard in the district court to urge the granting of injunctive relief, in support of and pursuant to the Regional Director's pending petition, whether or not the Regional Director continues to seek such relief. Similarly, they have standing to object to his refusal to persist in his efforts to secure such relief or to his decision to seek lesser relief. The right to make and be heard on these objections necessarily implies that the charging parties are entitled to the holding of a hearing on those objections despite the Regional Director's desire to dispense with such a hearing and to accept other and lesser than injunctive relief. And the combination of these rights should be understood to confer on charging parties the right to participate as full party-litigants in the district court, either directly or through intervention; those are the rights which are commonly exercised only by "parties", and there are no further or greater rights which could meaningfully be exercised within the statutory scheme of the Act.

### C. This Court Should Not Refuse to Adjudicate Either the Instant Case or the Pending Los Angeles Examiner v. Kennedy (No. 350, October Term, 1970) on the Basis of Mootness.

In the instant matter, the Respondent Union's unlawful secondary picketing has ceased, at least temporarily, and the dispute which gave rise thereto, to which dispute these petitioners were strangers, has been settled. However, there has as yet been no "final adjudication

of the Board'' such as would moot the case,[19] and the petition for injunctive relief filed by the Regional Director remains on the docket of the district court pending such a ''final adjudication''.[20] Accordingly, this case is neither ended, nor is it technically moot, although petitioners are not presently in need of relief from the conduct which gave rise to their original charges filed with the Board. Under these circumstances, the Board is likely to oppose the instant petition for writ of certiorari on the basis of mootness.

Similarly, in the Los Angeles Examiner case, involving the same issues as are presented here and currently pending decision in this Court on the charging parties' petition for writ of certiorari, the Board has, within the past few weeks rendered a final adjudication on the underlying case and has indicated that it will contend that the case has become moot.

In the interest of affording a needed definition of charging parties' rights in cases arising under Section 10(l) and in obedience to governing precedent, it is urged that this Court reject any such contention.

In determining whether disputes are moot in which the complaining party is without an immediate and present jeopardy, this Court has evolved two distinct lines of cases. One of these, in which mootness results, is illustrated by *Brockingham* v. *Rhodes,* 396 U. S. 41 and *Hall* v. *Beals,* 396 U. S. 45. The other, in which mootness does not result, is exemplified by *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission,* 219 U. S. 498 and *Moore* v. *Ogilvie,* 394 U. S. 814.

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19. *Sears, Roebuck and Co.* v. *Carpet Layers Union, supra.*

20. The petitioners have objected strenuously to the Regional Director's efforts to secure a settlement of the case on the grounds of the total inadequacy of that settlement to remedy the unlawful acts which have occurred and may recur. Should the Director overrule these pending objections, an appeal of his decision will be taken at least as far as the Board.

It is submitted that both the instant case and the pending *Los Angeles Herald Examiner* case are controlled by the *Southern Pacific* and *Moore* line of authority.

*Brockington* and *Hall* involved situations in which an individual sought to have his name placed on the ballot as a candidate for a particular office in a particular election (*Brockington*), and sought to be permitted to vote in a particular election (*Hall*) but was prevented from doing so pursuant to the operation of a statute which had subsequently been amended. At the time these cases reached this Court the statutory amendments had been effected and the specific elections involved had already been conducted. These cases were held to be moot not only because of an inability to grant the particular relief which had been sought but, more significantly, because a repetition of the kind of injuries complained of could not recur in view of the statutory amendments. That is, in practical terms, it was *impossible* for the claimed injury to recur either to the individual complaining parties or to any others who might have been similarly situated.

In the *Southern Pacific* and *Moore* line of cases no such *impossibility of recurrence* of the specific claimed injury existed; that represents the essential distinguishing characteristic between the two lines of cases since the absence of either a need for, or an ability to afford, effective immediate relief is common to both.

*Southern Pacific* involved an attempt to review a short-term order of the Interstate Commerce Commission which had expired pending review. *Moore* involved a challenge to the validity of a statute whose provisions effectively deprived the complainant of an opportunity to run for elective office; although the election had already taken place when the case came before this Court the statute which caused the alleged deprivation remained in full effect.

In holding that the latter cases were *not* moot, this Court relied on the fact that in each instance the claimed injury might recur in the *future* even though no meaningful relief could be afforded the litigants before the Court on their precise claim of injury. Thus, in *Southern Pacific*, the Interstate Commerce Commission might in the future promulgate a similar order, of a similar short-term duration, and absent the Court's determination of its propriety such an order would forever be "capable of repetition, yet evading review". Similarly, the continuing existence of the challenged statute in *Moore*, together with the fact that it had been interpreted and applied for over 30 years in the same manner as was being challenged, assured its *prospective effect* of keeping candidates off the ballot.

Particularly significant in both *Southern Pacific* and *Moore* was the fact that this Court did not require that the future injury to which a recurrence of the challenged activity could give rise must affect the precise parties then before the Court; the contention of mootness was overcome so long as any persons or groups in the same situation or class as those parties could have been similarly affected by a recurrence of the alleged improper conduct.

Analysis of the facts both of the instant case and those of the *Los Angeles Herald-Examiner* case reveal that they belong within the ambit of *Southern Pacific* and *Moore*.[21]

Both herein and in *Los Angeles Herald-Examiner*, the injury complained of is the refusal to recognize charging parties status as "parties" in district court or appellate court proceedings under Section 10(l), or to permit them

21. The continuing vitality of the *Southern Pacific* and *Moore* doctrine is evidenced by a continuing judicial adherence to it. *Reverend Thomas B. Allen, et al.* v. *Hickel, et al.*, ..... F. 2d ..... (CA DC, 1970); *Women Strike for Peace* v. *Hickel*, 420 F. 2d 597 (CA DC, 1969); *Friend* v. *United States*, 388 F. 2d 579 (CA DC, 1967).

to intervene in such proceedings. The question of the existence of "party" or "intervenor" status and the related question of the identification of the rights flowing from either of them is and will continue to be relevant at every stage of every case arising under Section 10(l). For example, they will govern the conduct of charging parties in every district court proceeding in which they contemplate any independent action or any action which the Board will not initiate on their behalf or with which the Board will not join; and they will arise in every instance in which the district court refuses to grant injunctive relief and the Board declines to appeal that denial. Moreover, assuming the validity of petitioners' substantive contentions herein, *prospective* injury to their interests and the interests off all other charging parties in proceedings under Section 10(l) seems assured, absent resolution by this Court, since the Board continues to assert in all such proceedings that charging parties do not constitute "parties" and may not intervene therein, and lack standing to appeal erroneous and adverse district court decisions.

Just as the test of *Southern Pacific* and *Moore* that there exist a possibility of future injury from a recurrence of the denial of claimed rights is satisfied in the cases currently pending in this Court, so also is the corrollary requirement that failure of the Court to decide the question because of mootness will result in a situation where the deprivations alleged will continue to evade review.

Pursuant to the terms of Section 10(l), injunctive relief afforded to aggrieved victims of unlawful strikes or boycotts is short-term in nature, extending only until the Board renders its "final adjudication" of the merits of the underlying dispute. Analysis of cases litigated under Section 10(l) during 1967 reveals that the average elapsed time between the district court's hearing on the petition

for injunctive and the Board's order on the underlying case is approximately ten (10) months. It is not feasible to bring a case to this Court within so short a period. Indeed, if the Board's "final adjudication" would necessarily render moot all cases arising under Section 10(l), it would be virtually impossible ever to secure from this Court a decision involving charges of judicial malfunction or error concerning or arising out of the granting or denying of injunctive relief in such cases; those cases would almost surely become "moot" as they proceeded through each of the time-consuming stages of the judicial process. And not only would the errors committed en route evade correction but they would assume the stature of "precedent" to aggrieve the same and other charging parties in similar future cases. This is precisely the danger which gave rise to *Southern Pacific* and *Moore*.

With respect to the *Los Angeles Herald-Examiner* case, the issuance of the Board's order limits the *relief* to which that Company may thereafter be entitled without rendering the case moot so as to deprive both it and the public of the opportunity to achieve a clarification of the rules which guide their conduct and describe their rights.[22]

With respect to the instant case, however, there has been no "final adjudication of the Board", and the matter re-

---

22. The "public interest" aspect of the *Southern Pacific* doctrine has represented to commentators in the field a particularly cogent argument in support of that doctrine:

> "Not easy to weight, [the public interest in an adjudication on the merits] has seemed to some courts so pressing . . . as to justify a decision on the merits despite the fact that the de-decision could have no substantial effect on the parties who originally raised the question and that its usefulness would, as a result, be largely confined to the creation of precedent." (Citations omitted.) (Note, *"Moot" Administrative Orders*, 53 Harv. L. Rev. 628, 630 (1940).

See also Note, *Mootness On Appeal in the Supreme Court*, 83 Harv. L. Rev. 1672 (1970).

mains pending on the district court's docket. Thus, any contention that the case is moot reduces to the claim that the respondent union's cessation of its unlawful picketing and the settlement by the disputing parties of their underlying dispute obviates the need to proceed further. Such a claim should fail, wholly apart from the proper application here on the *Southern Pacific* doctrine, in light of this Court's reiterated conclusion that the cessation under legal duress of unlawful conduct and the private resolution or settlement of the underlying dispute which gave rise to such conduct do not render a case moot when there exists even a possibility of recurrence of the illegal conduct.[23]

Apart from the requirements of the *Southern Pacific* doctrine and the interest of the public generally in a resolution of a recurring and troublesome problem, a finding of mootness here would detract from the efficient operation of the judicial process. Since, as this Court stated in *Flast* v. *Cohen*, 392 U. S. 83, 106, the mootness doctrine is intended to insure "the questions will be framed with the necessary specificity, that the issues will be contested with the necessary adverseness and that the litigation will be pursued with the necessary vigor to assure that the . . . challenge will be made in a form traditionally thought to be capable of judicial resolution," the instant case could not be deemed moot. The underlying questions remain unresolved; the continuing adverse position of the Board is assured; and the petitioners represent an injured and interested class of persons, and a repetition of the claimed injury from the same source will surely occur.[24]

In short, the mootness doctrine should not be employed as a device either to thwart review in whole classes of

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23. *Bakery Sales Drivers* v. *Wagshall*, 333 U. S. 437; *N. L. R. B.* v. *Mexia Textile Mills, Inc.*, 339 U. S. 563, *Local 1976, United Brotherhood of Carpenters and Joiners* v. *N. L. R. B.*, 357 U. S. 93; *N. L. R. B.* v. *Raytheon Company, et al.*, 398 U. S. 25.

24. See also *Goldberg* v. *Kelly*, ..... U. S. ....., 25 L. Ed. 287 (1970); *Sibron* v. *New York*, 392 U. S. 40, 52-3.

cases or to avoid resolution of issues of importance where, in either event, there is a likelihood that the substantive questions involved will recur, will continue to jeopardize the interests of these petitioners and others of the same class, will continue to evade review, and where there exists a guarantee that the issues will be fully and forcefully litigated by the opposing parties.

> "[M]ootness should never perpetually frustrate 'the vital importance of keeping open avenues of judicial review.' If the court is confronted with a substantial likelihood that an issue it believes moot will always arrive there in the same condition because of the inherent nature of the issue, the Court should not refuse review on the basis of mootness . . . [T]he real choice is not between taking or not taking risks with the quality of the judicial process, but between securing or not securing the values of appellate review—stability, uniformity, and objectivity."[25]

## CONCLUSION.

For the foregoing reasons, it is urged that this petition for writ of certiorari before judgment be granted.

Respectfully submitted,

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25. Note, *Mootness on Appeal in the Supreme Court*, supra, at 1692.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1970.

No. 781

SEARS, ROEBUCK AND CO.,

AND

TERMINAL FREIGHT COOPERATIVE ASSOCIATION AND TERMINAL FREIGHT HANDLING CO.,
*Petitioners.*

JOSEPH H. SOLIEN, REGIONAL DIRECTOR OF THE FOURTEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,

AND

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
*Respondents.*

## APPENDIX TO PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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# APPENDIX A.

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

| | |
|---|---|
| JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, *Petitioner*, *vs.* MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondent*. | Civil No. 70 C 317(2) |

PETITION FOR INJUNCTION UNDER SECTION 10(l) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED.

To the Honorable, the Judges of the United States District Court for the Eastern District of Missouri, Eastern Division:

Comes now Joseph H. Solien, Regional Director of the Fourteenth Region of the National Labor Relations Board (herein called the Board), and petitions this Court for and on behalf of the Board, pursuant to Section 10(l) of the

National Labor Relations Act, as amended, (61 Stat. 149; 73 Stat. 544; 29 U. S. C. Sec. 160(l); herein called the Act), for appropriate injunctive relief pending the final disposition of the matters involved herein pending before the Board on a charge alleging that Respondent has engaged in, and is engaging in, acts and conduct in violation of Section 8(b)(4)(i)(ii)(B) of the Act. In support thereof, petitioner respectfully shows as follows:

1. Petitioner is Regional Director of the Fourteenth Region of the Board, an agency of the United States and files this petition for and on behalf of the Board.

2. Jurisdiction of this Court is invoked pursuant to Section 10(l) of the Act.

3(a). On or about June 10, 1970, Sears, Roebuck and Co., (hereinafter called Sears) pursuant to the provisions of the Act, filed a charge with the Board alleging that Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a labor organization (hereinafter called Respondent), has been and is engaging in, unfair labor practices within the meaning of Section 8(b)(4)(i)(ii)(B) of the Act. An amended charge was filed on June 23, 1970. Copies of said charges are attached hereto as Exhibits 1 and 2, respectively, and made a part hereof.

(b) On or about June 12, 1970, Terminal Freight Cooperative Association (hereinafter called the Association), Terminal Freight Handling Company (hereinafter called Handling Company), and May Department Stores Company (hereinafter called May), pursuant to the provisions of the Act, filed a charge with the Board alleging that Respondent has been and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(i)(ii)(B) of

the Act. A copy of said charge is attached hereto as Exhibit 3 and made a part hereof.

4. The aforesaid charges were referred to Joseph H. Solien as Regional Director of the Fourteenth Region of the Board.

5. Upon the basis of the following, petitioner has reasonable cause to believe that said charges are true and that complaints of the Board based on said charges should issue against Respondent pursuant to Section 10(b) of the Act. More particularly, petitioner has reasonable cause to believe, and believes, that Respondent is a labor organization within the meaning of Sections 2(5), 8(b) and 10(l) of the Act, and that said Respondent has been and is engaging in, acts and conduct in violation of Section 8(b)(4)(i)(ii)(B) of the Act, affecting commerce within the meaning of Section 2(6) and (7) of the Act, as follows:

(a) Respondent, an unincorporated association, is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(b) Respondent maintains its principal office at 300 South Grand Boulevard, St. Louis, Missouri, and, at all times material herein, has been and is engaged within this judicial district in transacting business and in promoting and protecting the interests of its employee members.

(c) Sears is a corporation with an office and places of business in various states of the United States including the States of Missouri and Illinois, where it is engaged in the business of retail sales of clothing, furniture, tools, electrical appliances, sporting goods and other merchandise. In the operation of its business Sears annually receives goods and merchandise in Missouri, directly from points outside the State of Missouri, valued in excess of

$50,000, and annually receives goods and merchandise in Illinois, from points outside the State of Illinois, valued in excess of $50,000. Sears annually sells merchandise valued in excess of $500,000.

(d) Be-Rite Delivery Service, Inc., (herein called Be-Rite) is a corporation having offices and places of business at 1911 Locust and 1024 South Vandeventer in the City of St. Louis, and at 8950 Pershall, Hazelwood, all in the State of Missouri. Be-Rite is engaged in business as a delivery service, delivering goods, wares and merchandise for Sears and other persons in the Metropolitan Area of the City of St. Louis. In the course and conduct of its business operations, Be-Rite annually performs delivery services for Sears valued in excess of $50,000.

(e) Association is a non-profit shipper association consisting of 46 companies, including May, Boeing Company, Broadway-Hale Stores, North American Rockwell Corporation, Whirlpool Company, General Dynamics Corporation and Sears, which receives less-than-carload and less-than-truckload shipments, consolidates such shipments into carload lots and reships such goods to members' places of business at various locations throughout the United States. Members of the Association, individually and collectively, have annual gross sales in excess of $500,000, and each receives and ships goods valued at in excess of $50,000, in interstate commerce throughout the several states of the United States.

(f) Handling Co. is a non-profit Delaware corporation engaged in the handling, consolidation and trans-shipment of freight as manager of the Association. It operates 36 terminal facilities in 24 states and the District of Columbia, including a terminal at 924 Cerre Street, in St. Louis, Missouri. It has annual receipts of more than $1 million derived from services supplied in connection with the movement of freight in interstate commerce.

(g) May is a retail department store enterprise. In the operation of its retail business May annually sells goods, wares and merchandise valued in excess of $1 million and in the same period purchases from suppliers located in states other than the State of Missouri, goods, wares and merchandise valued in excess of $50,000, which were transported from said other states directly to May's facilities in the State of Missouri.

(h) At no time material herein has Respondent Union had any labor dispute with Sears, the Association, Handling Co. or May.

(i) At all times material herein Respondent Union has had a labor dispute with Be-Rite concerning the wages, hours, terms and conditions of employment of Be-Rite's employees.

(j) Since on or about June 9, 1970, Respondent in furtherance of its dispute with Be-Rite referred to in subparagraph (i) above, has picketed at stores of Sears located at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester Avenue, at Sears' warehouses at 8950 Pershall or 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis, in the State of Missouri, and at Sears' stores at 1001 State Street in East St. Louis, Illinois, and at 409 Piasa in Alton, Illinois.

(k) Commencing on or about June 10, 1970, Respondent, in furtherance of its dispute with Be-Rite, picketed Association, Handling Co. and Sears in the vicinity of 924 Cerre Street, St. Louis, Missouri.

(l) As a result of Respondent's acts and conduct referred to in subparagraph (j) above, employees of Sears and employees of other persons in commerce or an industry affecting commerce, ceased working during the period such picketing was conducted and have refused to perform services for their respective employers.

(m) As a result of Respondent's acts and conduct referred to in subparagraph (k) above, employees of Association, Handling Co., May and other persons in commerce or in an industry affecting commerce ceased working during the time such picketing was conducted and have refused to perform services for their respective employers.

(n) By the acts and conduct set forth in subparagraphs (j) and (k) above, Respondent has engaged in and has induced and encouraged individuals employed by Sears, the Association, the Handling Co. and May and other persons engaged in commerce or in an industry affecting commerce to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport or otherwise handle or work on goods, articles, materials or commodities or to perform services and has threatened, coerced and restrained Sears, the Association, the Handling Co. and May and other persons engaged in commerce or in industries affecting commerce.

(o) Objects of the Acts and conduct of the Respondent set forth in subparagraphs (j) and (k) above were, and are: (1) to force or require the Association, the Handling Co., and other persons engaged in commerce or in an industry affecting commerce, to cease doing business with Sears; and (2) to force and require Sears to cease doing business with Be-Rite.

6. It may fairly be anticipated that, unless enjoined, Respondent will continue or repeat the acts and conduct set forth in paragraph 5, subparagraphs (j) and (k), above, or similar or like acts and conduct in violation of Section 8(b)(4)(i)(ii)(B) of the Act. It is therefore essential, appropriate, just and proper, for the purpose of effectuating the policies of the Act, and in accordance with the provisions of Section 10(l) thereof, that, pending final disposition of the matters involved herein pending before

the Board, Respondent be enjoined and restrained from the commission of the acts and conduct above alleged, similar acts and conduct, or repetitions thereof.

WHEREFORE, petitioner prays:

1. That the Court issue an order directing Respondent to appear before this Court, at a time and place fixed by the Court, and show cause, if any there be, why an injunction should not issue enjoining and restraining Respondent, its officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with them, pending the final disposition of the matters involved herein pending before the Board, from:

(a) picketing at or in the vicinity of Sears' retail stores at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester Avenue, or at Sears, warehouses at 895 Pershall or 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis, in the State of Missouri, or at Sears' stores at 1001 State Street in East St. Louis, Illinois, and 309 Piasa in Alton, Illinois.

(b) picketing at or in the vicinity of the premises known and numbered as 924 Cerre Street in the City of St. Louis and State of Missouri.

(c) in any manner or by any means including picketing, orders, directions, instructions, requests or appeals, however given, made or imparted or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engaging in, or inducing or encouraging any individual employed by Sears, the Association, Handling Co. and May or by any other person engaged in commerce or in an industry affecting commerce to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work

on any goods, articles, materials or commodities or to perform any service, or in any manner or by any means threatening, coercing or restraining Sears, the Association, Handling Co. and May or any other person engaged in commerce or an industry affecting commerce where in either case an object thereof is to force or require Sears, the Association, Handling Co. and May or any other person to cease using, selling, handling, transporting or otherwise dealing in the products of or to cease doing business with Be-Rite.

2. That upon return of said Order to Show Cause, the Court issue an Order enjoining and restraining Respondent in the manner set forth above.

3. That the Court grant such further and other relief as may be just and proper in the premises.

Dated at Saint Louis, Missouri, this 29th day of June 1970.

/s/ Joseph H. Solien
Joseph H. Solien, Regional Director
National Labor Relations Board
Fourteenth Region

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*General Counsel,*

Dominick L. Manoli,
*Associate General Counsel,*

Julius G. Hoff,
*Assistant General Counsel,*

Gerald P. Finnegan,
*Regional Attorney,*

/s/ John S. Stevens
John S. Stevens, Attorney
National Labor Relations Board
1040 Boatmen's Bank Building
314 North Broadway
St. Louis, Missouri 63102
MAin 2-4154

A9

# EXHIBIT 1.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

## CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

Case No. 14-CC-664

Date Filed: June 10, 1970

1. Name of Labor Organization (or Local No., City, State or Regional Council)
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 610, AFL-CIO

2. Union Representative to Contact
William Shaner

3. Phone No.
869-8888

4. Address (Street, city, State and ZIP code)
369 South Grand Boulevard, St. Louis, Missouri 63103

5. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (4)(i)(ii)(B) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act.

6. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above-named labor organization, by its officers, agents and representatives, since on or about June 9, 1970, and continuing to date, has induced or encouraged individuals employed by persons engaged in commerce or in an industry affecting commerce to refuse in the course of their employment to transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, and has threatened, coerced or restrained persons engaged in commerce or in an industry affecting commerce where in either case an object thereof is to force or require Sears, Roebuck and Co., at the locations listed on the attachment, to cease using the services of Re-Rite Delivery Service, Inc., or to cease doing business with Re-Rite Delivery Service, Inc.

7a. Name of Employer
Re-Rite Delivery Service, Inc.

Office phone: 831-8888

7b. Location of Plant Involved (Street, city, State and ZIP code)
1111 Locust, St. Louis, Missouri 63103
Open Parkhill, Hazelwood, Missouri

1894 South Vandeventer, St. Louis, Missouri 63110

7c. Type of Establishment (Factory, mine, wholesaler, etc.)
local delivery company

7d. Identify Principal Product or Service
transportation of goods

7e. No. of Workers Employed
100

8. Full Name of Party Filing Charge
Sears, Roebuck and Co.

9a. Address of Party Filing Charge (Street, city, State and ZIP code)
401 Northwest Plaza, St. Ann, Missouri

9b. Telephone No.
main office
AX 1-1000

10. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By: [signature] Attorney
(Signature of representative or person making charge) (Title or office, if any)

Address: Chicago Title and Trust Building
111 West Washington Street
Chicago, Illinois 60602

312-641-0200
(Telephone number)

June 10, 1970
(Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, Section 1001)

NLRB/1f

Miscellaneous Drivers and Helpers Union,
Local No. 610, a/w International Brotherhood
of Teamsters, Chauffeurs, Warehousemen and
Helpers of America
(Ice-Rite Delivery Service, Inc.)
Case No. 14-CC-803

June 10, 1970

Attachment

Locations of Sears, Roebuck and Co. involved:

1408 North Kingshighway, St. Louis, Missouri 63113

3708 South Grand Boulevard, St. Louis, Missouri 63118

15 Crestwood Plaza, Crestwood, Missouri

490 Northwest Plaza, St. Ann, Missouri

1001 State Street, East St. Louis, Illinois

7412 Manchester, Maplewood, Missouri 63143

1024 South Vandeventer, St. Louis, Missouri 63110

8950 Pershall, Hazelwood, Missouri

309 Plaza, Alton, Illinois

RLR.

A11

# EXHIBIT 2.

FORM NLRB-501
(2-80)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved
Budget Bureau No. 44R0043.11

## CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 14-CB-883

Date Filed June 23, 1970

1. a. Name of Labor Organization or Its Agent Against Whom Charge is Brought
Local No. 688, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of

b. Union Representative to Contact
Business Representative

c. Telephone No.
314-231-1

d. Address (Street, city, State and ZIP code)
300 South Grand Boulevard, St. Louis, Missouri 63103

2. The above-named organization(s) or its agents has (have engaged) is and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsections _____ of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

3. Basis of the charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

The above-named labor organization, by its officers, agents and representatives, since on or about June 9, 1970, and continuing to date, has induced or encouraged individuals employed by persons engaged in commerce or in an industry affecting commerce to refuse in the course of their employment to transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, and has threatened, coerced or restrained persons engaged in commerce or in an industry affecting commerce where in either case an object thereof is to force or require Sears, Roebuck and Co., at the locations listed on the attachment, to cease using the services of De-Lite Delivery Service, Inc., or to cease doing business with De-Lite Delivery Service, Inc.

Since on or about June 19, 1970, the above-named labor organization, by the officers agents and representatives, has induced and encouraged individuals employed by Dependable Service Co. and Action Service Co., persons engaged in commerce or in an industry affecting commerce, to refuse in the course of their employment to perform work and to work on goods, articles and commodities, and has threatened, coerced and restrained persons engaged in commerce or in an industry affecting commerce where an object of all of this activity is to force or require Sears, Roebuck and Co. to cease using the services of De-Lite Delivery Service, Inc., or to cease doing business with De-Lite Delivery Service, Inc.

4. Name of Employer
De-Lite Delivery Service, Inc.

Office phone: 521-9332

5. Location of Plant Involved (Street, city, State and ZIP code)
1911 Locust, St. Louis, Missouri 63103
(8300 Forshall, Maplewood, Missouri

1004 South Vandeventer, St. Louis, Missouri 63110

6. Type of Establishment (Factory, mine, wholesaler, etc.)
local delivery company

7. Identify Principal Product or Service
transportation of goods

8. No. of Workers Employed
165

9. Full Name of Party Filing Charge
Sears, Roebuck and Co.

10. Address of Party Filing Charge (Street, city, State and ZIP code)
400 Northwest Plaza, St. Ann, Missouri

10a. Telephone No.
AR 1-1000

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ D. J. Sullivan — Attorney
(Signature of representative or person making charge) (Title or office, if any)

D. J. Sullivan
1303 Railway Exchange Bldg.
Address

CE 1-3330 (Telephone number)

June 23, 1970 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

305

GPO 905-401

Miscellaneous Drivers and Helpers Union,
Local No. 610, a/w International Brotherhood
of Teamsters, Chauffeurs, Warehousemen and
Helpers of America
(De-Rite Delivery Service, Inc.)
Case No. 14-CC-503

June 23, 1970

Attachment

Locations of Sears, Roebuck and Co. involved:

1408 North Kingshighway, St. Louis, Missouri 63113

3708 South Grand Boulevard, St. Louis, Missouri 63118

15 Crestwood Plaza, Crestwood, Missouri

490 Northwest Plaza, St. Ann, Missouri

1001 State Street, East St. Louis, Illinois

7412 Manchester, Maplewood, Missouri 63143

1024 South Vandeventer, St. Louis, Missouri 63110

8950 Pershall, Hazelwood, Missouri

309 Piasa, Alton, Illinois

# EXHIBIT 3.

FORM NLRB-501 (10-68)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved
Budget Bureau No. 64-R068.22

## CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 14-CC-402

Date Filed 6-12-70

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

| a. Name | b. Union Representative to Contact | c. Phone No. |
|---|---|---|
| Miscellaneous Drivers and Helpers Union, Local No. 610, a/w I.B. of T.C.W. & H. of A. | Wm. Kneisel, Bus. Rep. | 289-2558 |

d. Address (Street, city, State and ZIP code)

300 So. Grand Blvd., St. Louis, Missouri 63103

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) 4 (i) (ii) (B) (4) (Sub-paragraph(s)) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

See attachment A.

3. Name of Employer Terminal Freight Cooperative Association
Terminal Freight Handling Co.

4. Location of Plant Involved (Street, city, State and ZIP code)

924 Carre St. St. Louis, Missouri

| 5. Type of Establishment (Factory, mine, wholesaler, etc.) | 6. Identify Principal Product or Service | 7. No. of Workers Employed |
|---|---|---|
| Warehouse | General Merchandise | 5 |

8. Full Name of Party Filing Charge 1. Terminal Freight Cooperative Association and Terminal Freight Handling Company, 2. May Department Stores Co.

9. Address of Party Filing Charge (Street, city, State and ZIP code)

1. 924 Carre St. St. Louis, Missouri 63102
2. 6th and Olive Sts. St. Louis, Missouri 63101.

10. Telephone No.

CE 1-3151

## 11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Jerry Rosenberg (Signature of representative or person making charge) Atty. (Title or office, if any)

Address 111 W. Washington Street, Chicago, Illinois 60602 312-236-8987 (Telephone number) 6/12/70 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 855-454

Attachment A.

The above named labor organization and its agents, beginning on June 10, 1970, and continuing to the present, (i) have engaged in, induced and encouraged individuals employed by Terminal Freight Cooperative Association, Terminal Freight Handling Co., and Pine Transportation Co., persons engaged in commerce and in industries affecting commerce, and other persons so engaged, to engage in a strike or a refusal in the course of their employment to use, process, transport or otherwise handle or work on any goods, articles, materials or commodities shipped to or intended to be shipped to or received by or intended to be received by Famous Barr Stores ( a division of May Department Stores Co.), Boyd's Stores, American Biltrite Rubber Co., Venture Stores, Broadway-Hale Stores, City Products, Continental Can, Stik, Baer and Fuller, Van Waters and Rogers, Inc., and Rohr Corp., all members of Terminal Freight Cooperative Association and other members of said Association, or to perform any services for such members; and (ii) have since June 10, 1970, and continuing to the present, threatened coerced and restrained persons, including those named in (i) above, all of whom are persons engaged in commerce or in industries affecting commerce, with the object of forcing or requiring Terminal Freight Handling Co. and Pine Transportation Co. to cease using, handling, transporting or otherwise dealing in the products of Sears, Roebuck and Co. and of other producers, processors or manufacturers, including the persons named in (i) above, and to cease doing business with Sears, Roebuck and Co. and such other persons.

STATE OF MISSOURI
COUNTY OF ST. LOUIS } ss.

I, Joseph H. Solien, being first duly sworn depose and say that I am Regional Director of the Fourteenth Region of the National Labor Relations Board; that I have read the foregoing petition and exhibit and know the contents thereof; that the statements therein made as upon personal knowledge are true and those made as upon information and belief I believe to be true.

/s/ JOSEPH H. SOLIEN
Joseph H. Solien

Subscribed and sworn to before me this ..... day of .....

/s/ PAULA A. IACONA
*Notary Public.*

(SEAL)

My commission expires: October 31, 1973.

# APPENDIX B.

IN THE UNITED STATES DISTRICT COURT

For the Eastern District of Missouri

Eastern Division

| | |
|---|---|
| TERMINAL FREIGHT HANDLING COMPANY, AND, TERMINAL FREIGHT COOPERATIVE ASSOCIATION, *Plaintiffs*, *vs.* JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, *Defendant*. | Cause No. 70 C 300(3) |

## AMENDED COMPLAINT FOR MANDATORY INJUNCTION AND DECLARATORY RELIEF.

Come now plaintiffs, Terminal Freight Handling Company, and Terminal Freight Cooperative Association, by its attorneys, McMahon & Berger, and Borovsky, Ehrlich & Kronenberg, and for its Amended Complaint against defendant Joseph H. Solien, Regional Director of the Fourteenth Region of the National Labor Relations Board, alleges as follows:

1.

Plaintiff, Terminal Freight Handling Company, is a Delaware corporation and at all times herein has been and is qualified to do business in the State of Missouri. Plaintiff, Terminal Freight Cooperative Association, is a not for profit association authorized to do business in the State of Missouri. The events here involved concern the terminal facility operated by and used by Plaintiffs, which facility is located in the St. Louis, Missouri area at 924 Cerre Street, and within the jurisdiction of this Court. Plaintiffs are persons engaged in commerce and in an industry affecting commerce within the scope and meaning of Section 8(b)(4) of the National Labor Relations Act, 29 U. S. C., Section 154B (hereinafter referred to as the "Act.")

2.

Defendant is the Regional Director of the Fourteenth Region of the National Labor Relations Board (hereinafter referred to as the "Board"), with offices located in St. Louis, Missouri, and with jurisdiction over the terminal facility here involved.

3.

This is an action for a mandatory injunction and declaratory relief, brought pursuant to the provisions of Section 24(8) of the Judicial Code, 28 U. S. C. Section 1337 and 28 U. S. C. Section 1361, the Administrative Procedure Act, 5 U. S. C. Section 2201 and the Federal Declaratory Judgments Act, 28 U. S. C. Section 2201. There is now existing between the parties an actual, justiciable controversy in respect to which plaintiffs need injunctive relief as well as a declaration of their rights by this Court.

4.

On June 12, 1970, plaintiffs filed an unfair labor practice with defendant, which was assigned Cause No. 14-CC-604, alleging that Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, a labor organization (hereinafter called the "Union"), has been and is engaging in, unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act. Plaintiff further requested that the defendant proceed expeditiously with his preliminary investigation of said charge and that, if, after such investigation, he concluded that there was reasonable cause to believe that the charge was true and that complaint should issue, he seek a temporary restraining order from a United States District Court pursuant to the provisions of Section 10(1) of the Act which provides, in pertinent part, as follows:

> "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph 4(A), (B), or (C) of Section 8(b) . . . the preliminary investigation of such charge shall be made forthwith . . . If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he *shall*, on behalf of the Board, petition any district court of the United States . . . for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter." (Emphasis added.)

In support of its charge and request for a temporary restraining order, plaintiffs filed with defendant affidavits and other evidentiary material tending to establish that the Union had violated the Act as charged, and showing also that as a result of the Union's continuing unlawful

conduct, plaintiffs were suffering substantial and irreparable injury occasioned by the loss of customers, goodwill and business due to the inability to ship and to deliver perishable, limited market wearing apparel and other products. This evidentiary material tended to prove also that the Union's unlawful conduct and actions has caused a shutdown of plaintiffs' operations with the result that employees have been laid off, and, that the Union's unlawful actions and conduct are in derogation of the public interest and the policies of the National Labor Relations Act.

5.

The charge was referred to defendant for investigation and, on June 16, 1970, he concluded that as a result of his investigation, he had reasonable cause to believe that the charge was true and that a complaint should issue pursuant to Section 10(b) of the Act. More particularly, defendant had reasonable cause to believe, believed and still believes, that the Union has been, and is engaging in, acts and conduct in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

6.

As a result of defendant's investigation as described in Paragraph 5 above, and the mandatory language of Section 10(1) of the Act as described in Paragraph 4 above, on June 16, 1970, defendant further advised plaintiffs that he would seek injunctive relief from a United States District Court and would file a complaint in this Court as is required by Section 10(1) of the Act.

7.

On June 18, 1970, plaintiffs by their attorneys again urged and requested defendant to proceed to perform his required duty under Section 10(l) of the Act by filing a petition seeking injunctive relief, which relief defendant had indicated on June 16, 1970, would be sought.

8.

In response to the request heretofore described in Paragraph 7, defendant advised plaintiffs, at approximately 4:00 P.M. on June 18, 1970, that he did not intend to file a petition for injunctive relief under Section 10(l) of the Act.

9.

It may fairly be anticipated that, unless injunctive relief is sought and obtained by defendant, the Union will continue or repeat its unlawful conduct, or similar or like acts and conduct, in violation of Section 8(b)(4)(i) and (ii)(B) of the Act, all of which will cause substantial and irreparable injury to plaintiffs, employees and policies of the National Labor Relations Act as described in Paragraph 4 above. It is therefore essential, appropriate, just and proper, for the purpose of effectuating the policies of the Act, and in accordance with the provisions of Section 10(l) thereof, that, pending final disposition of the matters involved herein pending before the Board, the Union be enjoined and restrained from the commission of the acts and conduct above alleged, similar acts and conduct or repetitions thereof, which acts and conduct defendant has concluded he has reasonable cause to believe are in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

10.

By arbitrarily refusing and failing to seek injunctive relief, defendant has violated the express requirements of Section 10(l) of the Act and has thereby failed to perform his statutory duty and denied plaintiffs their legal right to injunctive relief under the Act. Plaintiffs have exhausted their administrative remedies in that there is no remedy available to the plaintiffs by way of appeal or review of the action of the defendant and plaintiffs have no adequate remedy at law, and, unless the mandatory injunction herein prayed for is granted, plaintiffs and the policies of the National Labor Relations Act will suffer irreparable injury and damage, as aforesaid.

11.

The aforesaid improper inaction and arbitrary refusals to act on the part of the Defendant Solien to the damage and injury of Plaintiffs' legal right to Section 10(1) injunctive relief under the Act, engaged in and by Defendant Solien pursuant to the authorities delegated to him by the General Counsel of the National Labor Relations Board under Section 3(d) of the Act, is erroneous, illegal and arbitrary and, in part, based upon written secret and public instructions issued by General Counsel of the National Labor Relations Board to Defendant Solien under said Section 3(d) which instructions are violative of the Act, the Constitution of the United States, the Administrative Procedure Act, and, are unauthorized by any law or statute of the United States presently enforced and in effect. Said instructions, in direct transgression of the mandatory provisions and intent of Section 10(l) of the Act, in their public form are contained in the National Labor Relations Board Field Manual dated July, 1967, as amended March

12, 1969, at Section 10230 which, in instructing the act to be taken by regional directors, states with regard to Section 10(f) as follows:

> "Under that section injunction proceedings are mandatory; however, *if it appears that the union has voluntarily ceased engaging in the conduct and a resumption thereof is not threatened, so that there may be nothing to enjoin, commencement of 10(l) proceedings may be held in abeyance,* as our experience in the courts has demonstrated that they are unwilling to accept filings where the activity has ceased and there is no likelihood of resumption. In the latter event, injunction proceedings should be instituted if it thereafter appears that a resumption of the conduct is imminent or likely." (Emphasis added.)

WHEREFORE, Plaintiffs pray as follows:

1. For a declaratory judgment that plaintiffs are now and have been since June 16, 1970, entitled to the filing of application for injunctive relief under Section 10(l) of the Act against the Union and its then unlawful and continuing unlawful conduct pending final adjudication of the Board in Case No. 14-CC-604;

2. For a declaratory judgment that the provision of Section 10230 of the Field Manual of the National Labor Relations Board set out in Paragraph 11 of this Amended Complaint are unconstitutional, unlawful, unauthorized by law or statute, null and void and of no force and effect.

3. For a mandatory injunction to compel the Defendant Solien, pursuant to Section 10(1) of the Act, to petition on behalf of the Board, the appropriate United States District Court for temporary injunctive relief against the Union's unlawful conduct pending the final adjudication of the Board Case No. 14-CC-604;

4. That the Court accord this Amended Complaint expeditious treatment in accordance with Section 10(l) of the Act, its provisions, purposes, and intendments and refused to allow any further delays by the Defendant Solien by continuing in effect the setting of this matter for July 2, 1970, for return to this Court's Order To Show Cause issued on June 19, 1970, and by scheduling due dates of briefs be filed with the Court as follows: *Plaintiffs' brief on June 29, 1970; Defendant's brief on July 1, 1970, and any brief in reply by plaintiffs on or before July 2, 1970.*

5. That the Court grant such other and further relief as may be just and proper.

Of Counsel:

BOROVSKY, EHRLICH &
KRONENBERG
111 West Washington Street
Chicago, Illinois

McMAHON & BERGER
1153 Pierre Laclede Building
7701 Forsyth Boulevard
St. Louis, Missouri

By: /s/ LAWRENCE D. EHRLICH
GERRY KRONENBERG
By: /s/ GERALD TOCKMAN
Gerald Tockman

STATE OF MISSOURI
COUNTY OF ST. LOUIS } ss.

Before me, a notary public for the County and State aforesaid, personally appeared Gerald Tockman to me personally known, and who being by me sworn upon oath, did state that he has read the foregoing Amended Complaint and that the allegations therein are true and correct to the best of his information, knowledge and belief.

Subscribed and sworn to before me this 26 day of June, 1970.

.....

*Notary Public*

My commission expires .....

Attorneys for Plaintiffs:

BOROVSKY, EHRLICH &
KRONENBERG
111 West Washington Street
Chicago, Illinois

McMAHON & BERGER
1153 Pierre Laclede Building
7701 Forsyth Boulevard
St. Louis, Missouri

By: /s/ LAWRENCE D. EHRLICH
GERRY KRONENBERG

By: /s/ GERALD TOCKMAN
Gerald Tockman

CERTIFICATION.

This is to certify in accordance with the Rules of this Court, that the above and foregoing Amended Complaint was duly served on all parties and parties in interest by depositing true and correct copies thereof in the United States Mail, postage prepaid, this 26th day of June, 1970, addressed to:

Joseph H. Solien, Esq.
Regional Director—14th Region
National Labor Relations Board
1040 Boatmen's Bank Bldg.
314 No. Broadway
St. Louis, Missouri 63102

Norman Armbruster, Esq.
Wiley, Craig, Armbuster & Wilburn
7 No. Seventh St.
St. Louis, Missouri

By: /s/ GERALD TOCKMAN
Gerald Tockman

## APPENDIX C.

UNITED STATES DISTRICT COURT

Eastern District of Missouri

JOSEPH H. SOLIEN, ETC.,
*vs.*
MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ETC.

70 C 317(2)

June 30, 1970

MEMORANDUM FOR CLERK.

ENTRY OF APPEARANCE.

Pursuant to Section 10(l) of the National Labor Relations Act, as amended, Sears, Roebuck and Co., the charging party in Case No. 14-CC-603 pending before the National Labor Relations Board, the underlying charge out of which this suit arises, enters its appearance as a party in this suit, by its attorneys.

LEWIS, RICE, TUCKER, ALLEN & CHUBB
By: D. J. SULLIVAN
1555 Railway Exchange Building
611 Olive Street
St. Louis, Missouri 63101
231-5833

MEMORANDUM FOR CLERK.

LEDERER, FOX AND GROVE
111 W. Washington Street
Suite 1837
Chicago, Illinois 60602
312-641-0200

GERARD C. SMETANA, ESQ.
925 Homan Avenue
Chicago, Illinois 60607
312-265-5352

## APPENDIX D.

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

| | |
|---|---|
| JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, *Petitioner,* *vs.* MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondent.* | Civil No. 70 C 317(2) |

### MOTION OF SEARS, ROEBUCK AND CO. TO ACCEPT ITS ENTRY OF APPEARANCE OR, IN ALTERNATIVE, TO INTERVENE.

Sears, Roebuck and Co. ("Sears") respectfully moves that its Entry of Appearance as a party in this suit, which was filed with the Clerk of this Honorable Court on June 30, 1970, be accepted, by virtue of the provisions of Section 10(l) of the National Labor Relations Act, as amended; and that Sears' status as a party to this suit be recognized by the Court. As grounds for this Motion, movant states the following:

(1) This is a suit arising out of unfair practice charges pending before the National Labor Relations Board (NLRB Case No. 14-CC-603);

(2) Sears is the charging party in the underlying proceedings before the Labor Board; and

(3) Under Section 10(l) of the National Labor Relations Act, Sears, as charging party in the administrative proceedings, is entitled to party status in this suit.

In the alternative, Sears respectfully moves, pursuant to Rule 24(e) of the Federal Rules of Civil Procedure, to intervene as of right as a party to this suit, upon the ground that a statute of the United States, namely Section 10(l) of the National Labor Relations Act, as amended, confers an unconditional right on Sears to intervene as a party herein.

Sears requests that the Court consider in connection with this Motion, its Memorandum in Support of Motion simultaneously filed herewith.

LEWIS, RICE, TUCKER, ALLEN & CHUBB
By D. J. SULLIVAN
1555 Railway Exchange Building
611 Olive Street
St. Louis, Missouri 63101
231-5833
*Attorneys for Sears, Roebuck and Co.*

PROOF OF SERVICE.

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record for all parties to the above cause by depositing same in an envelope addressed to such attorneys at their address as disclosed by the pleadings of record herein, with postage fully prepaid and by depositing said envelope in a U. S. Post Office mail box in St. Louis, Missouri, on the ..... day of ....., 19.....

## APPENDIX E.

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

| | |
|---|---|
| JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, *Petitioner*, *vs.* MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondent*. | Civil No. 70 C 317(2) |

### MOTION TO APPEAR AND PARTICIPATE AS FULL PARTIES LITIGANT.

Come now, Terminal Freight Handling Company, hereinafter referred to as Terminal Freight, and Terminal Freight Cooperative Association, hereinafter referred to as Terminal Association, by their attorneys, who respectfully move that this Court permit the movants herein to appear in the above entitled cause and fully participate as parties and in support of this Motion, state as follows:

1. Terminal Freight is a Delaware corporation, author-

ized to do business in the State of Missouri, with its place of business located at 924 Cerre Street, St. Louis, Missouri.

2. Terminal Association is a not for profit association, authorized to do business in the State of Missouri, with its place of business also located at 924 Cerre Street, St. Louis, Missouri.

3. The unlawful acts of picketing by the Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the "union," have been and are violative of the National Labor Relations Act, 29 U. S. C. Section 151, et seq. and are directed at the terminal and place of business of Terminal Freight and Terminal Association located at 924 Cerre Street, St. Louis, Missouri.

4. The Regional Director of the Fourteenth Region of the National Labor Relations Board has brought the above entitled action pursuant to the National Labor Relations Act, 29 U. S. C. Section 160(l) because he has investigated a charge that the union has engaged in an unfair labor practice and has reasonable cause to believe that said charge is true.

5. The National Labor Relations Act, 29 U. S. C. Section 160(l) authorizes this Court to grant such injunctive relief or temporary restraining order as it deems just and proper, and also confers upon the charging party, here Terminal Freight and Terminal Association, the right to appear by counsel and present relevant evidence.

6. The unlawful picketing of the union has substantially interfered with the operations of Terminal Freight and Terminal Association.

7. That Terminal Freight and Terminal Association are vitally concerned with securing injunctive relief to

prohibit any and all unlawful picketing at their place of business.

8. That it is necessary for Terminal Freight and Terminal Association to participate in the above entitled action as full parties litigant as authorized by the National Labor Relations Act. See also *Retail Clerks Union, Local 137 et al.* v. *Food Employers' Council, Inc.*, 351 P. 2d 525 (9th Cir. 1965).

9. That in the event Terminal Freight and Terminal Association are not permitted to participate as full parties litigant, their ability to protect their interest from unlawful picketing may be impaired or impeded. See *e.g. Sears, Roebuck and Company* v. *Carpet, Linoleum, Soft Tile and Resilient Floor Covering Layers, Local Union No. 419*, 410 F. 2d 1148 (10th Cir. 1969, judgment vacated and complaint dismissed as moot U. S. ..... S. Ct., No. 419 (Apr. 27, 1970) also reported at 74 LRRM 2001).

WHEREFORE, Terminal Freight and Terminal Association respectfully pray that this Court permit them to enter, appear and participate as full parties litigant in the above entitled action.

Attorneys for Plaintiffs
BOROVSKY, EHRLICH &
KRONENBERG
111 West Washington Street
Chicago, Illinois

McMAHON & BERGER
1153 Pierre Laclede Building
7701 Forsyth Boulevard
St. Louis, Missouri

By: /s/ LAWRENCE D. EHRLICH
By /s/ JERRY KRONENBERG
Jerry Kronenberg
By .....
Gerald Tockman

(Dated: July 1, 1970)

CERTIFICATION.

This is to certify in accordance with the Rules of this Court, that the above and foregoing Motion To Appear And Participate As Full Parties Litigant was duly served on all parties by depositing true and correct copies thereof in the United States Mail, postage prepaid, this 1st day of July, 1970, addressed to:

Joseph H. Solien, Esq.
Regional Director—14th Region
National Labor Relations Board
1040 Boatmen's Bank Building
314 North Broadway
St. Louis, Missouri 63102

Norman Armbruster, Esq.
Wiley, Craig, Armbruster & Wilburn
7 No. Seventh Street
St. Louis, Missouri

By: /s/ GERALD TOCKMAN
By .....
Gerald Tockman

## APPENDIX F.

UNITED STATES OF AMERICA

Before the National Labor Relations Board

Fourteenth Region

| | |
|---|---|
| MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, (Be-Rite Delivery Service, Inc.) and SEARS, ROEBUCK AND CO., | Case No. 14-CC-603 |
| MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and TERMINAL FREIGHT COOPERATIVE ASSOCIATION AND TERMINAL FREIGHT HANDLING COMPANY AND MAY DEPARTMENT STORES, INC. | Case No. 14-CC-604 |

### ORDER CONSOLIDATING CASES, COMPLAINT AND NOTICE OF HEARING.

It having been charged in Case No. 14-CC-603 by Sears, Roebuck and Co., herein sometimes called Sears, that Miscellaneous Drivers and Helpers Union, Local No. 610, affili-

ated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein sometimes called Respondent, and in Case No. 14-CC-604 by Terminal Freight Cooperative Association and Terminal Freight Handling Company and May Department Stores, Inc., that Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U. S. C., Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for the Fourteenth Region, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

HEREBY ORDERS, pursuant to Section 102.33 of the Board's Rules and Regulations—Series 8, as amended, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated, the General Counsel of the Board, on behalf of the Board, by the undersigned Regional Director, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations—Series 8, as amended, hereby issues this consolidated complaint and notice of hearing and alleges as follows:

1.

The original charge in Case No. 14-CC-603 was filed by Sears on June 10, 1970, and served by registered mail upon Respondent on or about the same date.

The original charge in Case No. 14-CC-604 was filed by Terminal Freight Cooperative Association and Terminal Freight Handling Company and May Department Stores, Inc., on June 12, 1970, and served by registered mail upon Respondent on or about the same date.

The first amended charge in Case No. 14-CC-603 was filed by Sears on June 23, 1970, and served by registered mail upon Respondent on or about the same date.

2.

A. Be-Rite Delivery Service, Inc., hereinafter called Be-Rite, is and has been at all times material herein, a corporation duly authorized to do business in the State of Missouri.

B. At all times material herein, Be-Rite has maintained offices and places of business at 8950 Pershall Road, 1911 Locust and 1024 South Vandeventer in the Metropolitan Area of the City of St. Louis and State of Missouri. Be-Rite is, and has been at all times material herein, engaged in the transportation and distribution of goods, wares and merchandise for Sears.

C. During the year ending June 1, 1970, which period is representative of its operations during all times material herein, Be-Rite, in the course and conduct of its business operations, furnished services to Sears valued in excess of $50,000.

3.

A. Sears is, and has been at all times material herein, a corporation duly authorized to do business in the States of Missouri and Illinois.

B. At all times material herein, Sears has maintained its places of business at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 409 Northwest Plaza, 7412 Manchester, 8950 Pershall and 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis and in the State of Missouri. Sears also maintains places of business at 1001 State Street in the City of East St. Louis, Illinois, and 309 Piasa in the City of Alton, Illinois. Sears

is, and has been at all times material herein, engaged in the sale and distribution of clothing, furniture, tools, electrical appliances, sporting goods and other merchandise.

C. During the year ending June 1, 1970, which period is representative of its operations during all times material herein, Sears, in the course and conduct of its business, sold and distributed at retail, goods, wares and merchandise valued in excess of $500,000, at each location in paragraph 3B.

D. During the year ending June 1, 1970, which period is representative of its operations during all times material hereto, Sears, in the course and conduct of its business operations, purchased and caused to be transported and delivered at each of its places of business in the States of Missouri and Illinois in paragraph 3B, clothing, furniture, tools, electrical appliances, sporting goods and other merchandise valued in excess of $50,000 of which goods and materials valued in excess of $50,000, were transported and delivered to each of its places of business in the Metropolitan Area of St. Louis, directly from points located outside the States respectively of Missouri and Illinois.

4.

A. Terminal Freight Cooperative Association (hereinafter called Association) is a nonprofit association consisting of 46 companies including *inter alia*, May Department Stores, Inc., (hereinafter called May) and Sears.

B. Association is engaged in the business of receiving less-than-carload and less-than-truckload shipments, consolidating such shipments into carload lots and reshipping goods to its members' places of business in various locations throughout the United States.

C. Members of the Association individually have annual gross sales in excess of $500,000, and each such member,

including May and Sears, annually receives goods, wares and merchandise in Missouri valued in excess of $50,000, directly from points located outside the State of Missouri.

5.

A. Terminal Freight Handling Company, (hereinafter called Handling Company) is a nonprofit Delaware corporation authorized to do business in the State of Missouri.

B. Handling Company is engaged in the handling, consolidation and shipment of freight and acts as the manager of Association. It operates 36 facilities in 24 states and the District of Columbia including a terminal at 924 Cerre Street in St. Louis, Missouri.

C. Handling Company annually receives in excess of $1 million from services supplied to members of the Association in connection with the movement of freight in interstate commerce.

6.

A. May is a retail department store enterprise authorized to do business in the State of Missouri.

B. May maintains retail department stores in the Metropolitan Area of the City of St. Louis, each of which stores individually and collectively annually sells goods, wares and merchandise valued in excess of $1 million.

C. May annually purchases from suppliers in states other than the State of Missouri, goods, wares and merchandise valued in excess of $50,000, which goods are shipped from said other states directly to May at each of its facilities in the State of Missouri.

7.

A. Dependable Service Company, (hereinafter called Dependable) has been at all times material herein a corporation authorized to do business in the State of Missouri.

B. Dependable maintains an office and place of business at 1024 South Vandeventer in the City of St. Louis and State of Missouri where it is and has been at all times material herein engaged in the business of repairing electrical appliances.

C. During the year ending June 1, 1970, which period is representative of its operations at all times material hereto Dependable, in the course and conduct of its business operations, furnished services to Sears valued in excess of $50,000.

8.

A. Action Service Company, (hereinafter called Action) is and has been at all times material herein a corporation authorized to do business in the State of Missouri.

B. Action at all times material herein has maintained an office and place of business at 3528 Wismer Street in the City of St. Louis and State of Missouri where it is and has been at all times material herein engaged in the business of repairing electrical appliances.

C. During the year ending June 1, 1970, which period is representative of its operations at all times material herein, Action, in the course and conduct of its business operations, purchased and caused to be delivered to its place of business at 3528 Wismer Street electrical and mechanical parts and appliances valued in excess of $50,000, which parts and appliances were delivered directly to it in the State of Missouri from points located outside the State of Missouri.

9.

Each Be-Rite, Sears, Association, Handling Company, May, Dependable and Action is now and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and a person in commerce or in an industry affecting commerce within the meaning of Section 8(b) (4) of the Act.

10.

Respondent is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

11.

At no time material herein has Respondent had any labor dispute with Sears, the Association, Handling Company or May.

12.

At all times material herein Respondent Union has had a labor dispute with Be-Rite concerning the wages, hours, terms and conditions of employment of Be-Rite's employees.

13.

A. Commencing on June 9, 1970, Respondent in furtherance of its dispute with Be-Rite referred to in paragraph 12 above has picketed Sears at its stores located at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester Avenue and at Sears' warehouses at 8950 Pershall and 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis and State of Missouri, and at Sears' stores at 1001 State Street in East St. Louis, Illinois, and at 309 Piasa in Alton, Illinois.

B. Commencing on or about June 10, 1970, Respondent in Furtherance of its dispute with Be-Rite referred to in paragraph 12 above picketed Association, Handling Company and May in the vicinity of 924 Ceere Street, St. Louis, Missouri.

14.

Commencing on or about June 9, 1970, and continuing to date, Respondent by its officers, agents and representatives, has engaged and is engaging in and by picketing, requests, appeals, orders, instructions and other means has induced and encouraged and is inducing and encouraging individuals employed by Sears, the Association, Handling Company, May, Dependable, Action and other persons engaged in commerce or in industries affecting commerce to engage in a refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services for their respective employers and has threatened, coerced and restrained Sears, the Association, Handling Company, May, Dependable, Action and other persons engaged in commerce or in industries affecting commerce.

15.

Objects of the acts and conduct of Respondent set forth in paragraphs 13 and 14 above were and are:

A. To force or require the Association, Handling Company, May, Dependable, Action and other persons engaged in commerce or in an industry affecting commerce to cease doing business with Sears.

B. To force and require Sears to cease doing business with Be-Rite.

16.

Respondent by the acts and conduct referred to in paragraphs 13, 14 and 15 above, and by each of said acts, has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

17.

The acts of Respondent described in paragraphs 13, 14 and 15 above, occurring in connection with operations of Association, Handling Company, May, Sears and Be-Rite, described in paragraphs 2, 3, 4, 5 and 6, above, have a close intimate and substantial relation to trade, traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 8(b)(4)(i) and (ii)(B) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 27th day of July 1970, at 10 a.m. (CDST), or as soon thereafter as you may be heard, at 1040 Boatmen's Bank Building, 314 North Broadway, St. Louis, Missouri, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person or otherwise, and give testimony. Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Rela-

tions Board, an original and 4 copies of an answer to said complaint within 10 days from the service thereof and that unless it does so all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at St. Louis, Missouri, this 2nd day of July 1970.

/s/ JOSEPH H. SOLIEN

Joseph H. Solien, Regional Director
Fourteenth Region
National Labor Relations Board
1040 Boatmen's Bank Building
314 North Broadway
St. Louis, Missouri 63102

## APPENDIX G.

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,
*Petitioner,*
*vs.*
MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
*Respondent.*
} Civil No. 70 C 317(2)

### STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys for the respective parties hereto, subject to the approval of the Court, that;

1. Pending final disposition of the matters presently pending before the National Labor Relations Board (herein called the Board) in connection with charges and amended charges filed by Sears, Roebuck and Co. in Case No. 14-CC-603 and charges filed by Terminal Freight Cooperative Association and Terminal Freight Handling Co. and May Department Stores Company in Case No. 14-CC-604,

Respondent Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, (herein called Respondent) its officers, representatives, agents, servants, employees and all members and persons acting in concert or participation with it will not:

(a) Picket at or in the vicinity of Sears, Roebuck and Co.'s retail stores at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester Avenue, or at Sears, Roebuck and Co.'s warehouses at 8950 Pershall or 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis, in the State of Missouri, or at Sears, Roebuck and Co.'s stores at 1001 State Street in East St. Louis, Illinois, and 309 Piasa in Alton, Illinois.

(b) Picket at or in the vicinity of the premises known and numbered as 924 Cerre Street in the City of St. Louis and State of Missouri.

(c) In any manner or by any means including picketing, orders, directions, instructions, requests or appeals, however given, made or imparted or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engage in, or induce or encourage any individual employed by Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co. and May Department Stores Company, or by any other person engaged in commerce or in any industry affecting commerce to engage in a strike or refusal on the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform

any service, or in any manner or by any means threaten, coerce or restrain Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co., and May Department Stores Company or any other person engaged in commerce or an industry affecting commerce where in connection with the acts and conduct set out in subparagraphs (a), (b) and (c) hereof an object thereof is to force or require Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co., and May Department Stores Company, or any other person to cease using, selling, handling, transporting or otherwise dealing in the products of or to cease doing business with Be-Rite Delivery Service, Inc. or Sears, Roebuck and Co.

2. In the event that the Regional Director for the Fourteenth Region of the Board, after investigation of an alleged breach by Respondent of any of the provisions of paragraph 1 of this Stipulation, thereupon files with the Court an Affidavit stating that he has found probable cause to believe that Respondent has breached the provisions of paragraph 1 of this Stipulation, the Court may, upon 24 hours notice to Respondent, forthwith enter a Temporary Injunction against said Respondent in the form set forth in Exhibit (A) attached hereto. In this connection, Respondent waives a further hearing before the Court, as well as the making of Findings of Fact and Conclusions of Law by the Court.

3. This case shall in the meanwhile remain on the Docket of this Court and upon compliance by Respondent with its obligation undertaken hereunder and upon the final disposition of the matters pending before the Board, as aforesaid, the Petitioner shall cause this proceeding to be dismissed.

4. The making and execution of this Stipulation does not constitute an admission by Respondent that it has engaged in unfair labor practices.

5. Nothing contained in this Stipulation shall be construed to make unlawful, where not otherwise unlawful, any primary picketing.

Respondent Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by signing this Stipulation, acknowledges receipt of a copy of the petition upon it and fully enters its appearance in Case No. 70C 317(2) now pending before this Court.

Dated at St. Louis, Missouri, this ..... day of July 1970.

JOHN S. STEVENS,
*Attorney for Petitioner.*

.....
*Attorney for Respondent.*

Approved and so ordered this ..... day of ....., 1970.

.....
*United States District Judge.*

EXHIBIT A

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,
*Petitioner,*
*vs.*
MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
*Respondent.*

Civil No. 70 C 317(2)

ORDER GRANTING TEMPORARY INJUNCTION.

A verified petition of Joseph H. Solien, Regional Director for the Fourteenth Region of the National Labor Relations Board (herein called the Board), for and on behalf of said Board, for a temporary injunction, pursuant to Section 10(l) of the National Labor Relations Act, as amended, pending the final disposition of the said Board with respect to the matters involved therein, having been filed herein on June 29, 1970, and a Stipulation dated ..... ....., having been entered into by Plaintiff and Defendant providing for the entry of a temporary injunction upon the

occurrences of certain contingencies described therein and an affidavit by the Regional Director of the Fourteenth Region of the Board, dated ....., having been filed pursuant to said Stipulation, and notice thereupon having been given to Respondent, it is, upon said Stipulation, affidavit, and the entire record herein.

ORDERED, ADJUDGED, AND DECREED that, pending the final disposition of the matters involved pending before the National Labor Relations Board, Respondent Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with it, be and they hereby are, enjoined and restrained from:

(a) Picketing at or in the vicinity of Sears, Roebuck and Co.'s retail stores at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester Avenue, or at Sears, Roebuck and Co.'s warehouses at 8950 Pershall or 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis, in the State of Missouri, or at Sears, Roebuck and Co.'s stores at 1001 State Street in East St. Louis, Illinois, and 309 Piasa in Alton, Illinois.

(b) Picketing at or in the vicinity of the premises known and numbered as 924 Cerre Street in the City of St. Louis and State of Missouri.

(c) In any manner or by any means including picketing, orders, directions, instructions, requests or appeals, however given, made or imparted or by any like or related acts or conduct, or by permitting any such

to remain in existence or effect, engaging in, or inducing or encouraging any individual employed by Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co. and May Department Stores Company, or by any other person engaged in commerce or in any industry affecting commerce to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any service, or in any manner or by any means threatening, coercing or restraining Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co., and May Department Stores Company or any other person engaged in commerce or an industry affecting commerce

where in connection with the acts and conduct set out in subparagraphs (a), (b) and (c) hereof an object thereof is to force or require Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co., and May Department Stores Company, or any other person to cease using, selling, handling, transporting or otherwise dealing in the products of or to cease doing business with Be-Rite Delivery Service, Inc. or Sears, Roebuck and Co.; provided, however, that nothing in this Order shall be construed to make unlawful, where not otherwise unlawful, any primary picketing.

Done at Saint Louis, Missouri, this ..... day of ....., 1970.

.....

*United States District Judge.*

# APPENDIX H.

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

| | |
|---|---|
| JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, *Petitioner*, *vs.* MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondent*. | Civil No. 70 C 317(2) |

## OBJECTIONS TO PROPOSED STIPULATION.

Sears, Roebuck and Co. ("Sears"), charging party in the underlying Board proceedings, and maintaining that it is a proper party to this suit, herewith files objections to the proposed stipulation being submitted to the Court for its approval herein.

*Objection 1.* The format of the proposed stipulation is an agreement between counsel for the government and counsel for the respondent union. No provision is made for Sears to be a party to the stipulation. There is no place

on the signature page for Sears to sign, by counsel or otherwise. Sears' position is that it is a proper party to this suit, for reasons already explained to the Court; and that therefore, it is a necessary party to any proposed stipulation undertaking to dispose of the suit.

*Objection 2.* In Paragraph 1(a), (b), (c), there is no provision for the respondent union's agreeing to dissolve and cancel the conspiracy it has entered into with Teamsters Locals 600, 618, 688 and others to cause secondary work stoppages among Sears' employees in furtherance of its dispute with BeRite, a different employer. Nor does the proposed order granting temporary injunction provide for this. The evidence would demonstrate that such a conspiracy does exist and, to remedy the violations that have occurred, this conspiracy should be dissolved and cancelled.

*Objection 3.* The stipulation does not provide for the entry of a temporary injunction now, but involves the withholding of injunctive relief unless and until a breach of the stipulation has occurred. We submit that the stipulation should provide for the immediate entry of a temporary injunction, in view of the serious violations of the act which have occurred.

*Objection 4.* Under Paragraph 2 of the proposed stipulation breaches of the provisions of the stipulation can be brought to the attention of the Court only after investigation by the Regional Director, and only the Regional Director may apply for prompt injunctive relief. Aside from its contention that an injunction should be entered now, by consent, Sears maintains that if it is of the belief that the stipulation is being violated, it should have prompt access to the Court to secure injunctive relief without delay. If Sears is a party to the suit, it should have access to the Court in this connection, and standing to pray for relief.

The history of this whole matter demonstrates how unsatisfactory the procedure is when the charging party is obliged to await the deliberations of the Regional Office of the Board before access can be had to this Court.

Moreover, the wording of Paragraph 2 is vague and could not help but lead to disagreement and delay in the event of breaches of the stipulation, particularly in view of the ambiguous reference to "primary picketing" and the respondent's reserving the right to engage in such picketing in paragraph 5.

*Objection 5.* Paragraph 4 contains an exculpatory clause under which the respondent does not admit it has engaged in unfair practice. It is submitted that this clause has no place in the proposed stipulation, since it is inconsistent with the whole idea of the Petitioner Regional Director's having reasonable cause to believe that the charge was true and that complaint should issue. This was the basis upon which the petitioning Regional Director filed this suit, and he should not now join in a stipulation exculpating the respondent union.

It is respectfully requested that if the Court is disposed to approve this proposed stipulation, it state in its Order of approval that it is doing so over the objections of Sears.

Respectfully submitted,

LEWIS, RICE, TUCKER, ALLEN & CHUBB,
By D. J. SULLIVAN,
611 Olive Street—Suite 1555,
St. Louis, Missouri 63101,
231-5833,
*Attorneys for Sears, Roebuck & Co.*

(Dated: July 7, 1970)

## APPENDIX I.

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

| | |
|---|---|
| JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, *Petitioner,* *vs.* MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondent.* | Civil No. 70 C 317(2) |

### MOTION TO INTERDICT ENTRY OF AND OBJECTIONS TO PROPOSED STIPULATION.

Come now Terminal Freight Handling Company ("Company") and Terminal Freight Cooperative Association ("Association"), charging parties and initiators of all administrative action in the underlying Board proceedings known as Case No. 14-CC-604, and pursuant to its Motion to Appear and Participate as Full Parties Litigant here-

tofore filed, moves this Court interdict entry of the proposed Stipulation being submitted to the Court for its approval herein.

The basis for the Motion of Company and Association herein, and its objections to the proposed Stipulation, are:

*Objection 1.* The format of the proposed stipulation is an agreement between counsel for the government and counsel for the respondent union. No provision is made for Company and Association to be parties to the stipulation. The position of Company and Association is they are proper parties to this suit and that therefore, they are necessary and required parties to any proposed stipulation undertaking to dispose of the suit.

*Objection 2.* In Paragraph 1(a), (b), (c), there is no provision for the respondent union's agreeing to dissolve and cancel the conspiracy it has entered into with Teamsters Locals 600, 618, 688, and others to cause secondary work stoppages among employees of employers utilizing the facilities of Company and Association in furtherance of its dispute with BeRite, a different employer. Nor does the proposed order granting temporary injunction provide for this. The evidence would demonstrate that such a conspiracy does exist and, to remedy the violations that have occurred, this conspiracy should be dissolved and cancelled.

*Objection 3.* The stipulation does not provide for the entry of a temporary injunction now, but involves the withholding of injunctive relief unless and until a breach of the stipulation has occurred. We submit that the stipulation should provide for the immediate entry of a temporary injunction, in view of the serious violations of the act which have occurred.

*Objection 4.* Under Paragraph 2 of the proposed stipulation, breaches of the provisions of the stipulation can be brought to the attention of the Court only after investigation by the Regional Director, and only the Regional Director may apply for prompt injunctive relief. Aside from their contention that an injunction should be entered now, by consent, Company and Association maintain that if the stipulation is being violated, they should have prompt access to the Court to secure injunctive relief without delay. The history of this whole matter demonstrates how unsatisfactory the procedure is when the charging party is obliged to await the deliberations of the Regional Office of the Board before access can be had to this Court.

*Objection 5.* Paragraph 4 contains an exculpatory clause under which the respondent union does not admit it has engaged in unfair practice. This clause has no place in the proposed stipulation, since it is inconsistent with the whole idea of the Petitioner Regional Director's having reasonable cause to believe that the charge was true and that complaint should issue. This was the basis upon which the petitioning Regional Director filed this suit, and he should not now join in a stipulation exculpating the respondent union.

Company and Association further join in and adopt the Statement of Objections to Proposed Stipulation heretofore filed in this Cause by Sears, Roebuck and Co., the charging party in underlying Board proceedings known as Case No. 14-CC-603.

Wherefore, Company and Association move this Court to interdict entry of the aforesaid proposed Stipulation for the objections stated above and further move that if said Stipulation is entered as proposed, this Court note in its

order that said entry is over the express objections of Company and Association.

Respectfully submitted,

Bonovsky, Ehrlich &
Kronenberg,
111 West Washington Street,
Chicago, Illinois 60602,
By: Jerry Kronenberg.

McMahon & Berger,
1153 Pierre Laclede Building,
7701 Forsyth Boulevard,
St. Louis, Missouri 63105,
By: Gerald Tockman.

Certification.

This is to certify in accordance with the Rules of this Court, that the above and foregoing Motion and Objections was duly served on all parties by hand-delivering true and correct copies thereof this 7th day of July, 1970, to:

Joseph H. Solien, Esquire,
Regional Director—14th Region,
National Labor Relations Board,
1040 Boatmen's Bank Building,
314 North Broadway,
St. Louis, Missouri 63102.

Norman Armbruster, Esquire,
Wiley, Craig, Armbruster & Wilburn,
7 North Seventh Street,
St. Louis, Missouri.

D. J. Sullivan, Esquire,
Lewis, Rice, Rucker, Allen & Chubb,
611 Olive Street,
St. Louis, Missouri 63101,
(Attorneys for Sears, Roebuck & Co.)

# APPENDIX J.

## Exhibit I.

United States District Court
For the Eastern District of Missouri
Eastern Division

| | |
|---|---|
| Joseph H. Soliben, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board, *Petitioner*, vs. Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, *Respondent*. | Civil No. 70 C 317(2) |

## ORDER.

This matter is pending on motions of Sears, Roebuck and Company, Terminal Freight Handling Company, and Terminal Freight Cooperative Association to intervene as full parties in this litigation, and upon the proposed intervenors' objections to a proposed stipulation petitioner and respondent presented to the Court. The Court has been duly advised by briefs of all parties and by oral argument.

IT IS HEREBY ORDERED that the motions of Sears, Roebuck and Company, Terminal Freight Handling Company, and Terminal Freight Cooperative Association to intervene be and the same are denied. However, these parties will be notified of all actions by the petitioner and respondent in this case, and will be permitted at all times to introduce evidence, appear at hearings, and file briefs and keep the Court advised of any matters that should be brought to the attention of the Court.

IT IS FURTHER ORDERED that the proposed stipulation entered into between the petitioner and respondent is disapproved.

IT IS FURTHER ORDERED that the matter be set down for hearing on Wednesday, July 15, 1970, at 10:00 a.m., at which time the respondent is directed to show cause why a temporary injunction should not be issued.

IT IS FURTHER ORDERED that the Clerk of the Court shall note the names of the attorneys for the proposed intervenors on the docket and they shall be sent copies of all pleadings, memoranda, and orders by the Clerk, and the petitioner and respondent shall also send copies of all pleadings and briefs which they may file to attorneys for the proposed intervenors.

Dated this 8th day of July, 1970.

/s/ James H. Meredith,
*United States District Judge.*

# APPENDIX K.

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

| | |
|---|---|
| JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, *Petitioner*, vs. MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondent*. | Civil No. 70 C 317(2) |

## STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys for the respective parties hereto, subject to the approval of the Court, that:

1. Pending final disposition of the matters presently pending before the National Labor Relations Board (herein called the Board) in connection with charges and amended charges filed by Sears, Roebuck and Co. in Case No. 14-CC-603 and charges filed by Terminal Freight Co-

operative Association and Terminal Freight Handling Co. and May Department Stores Company in Case No. 14-CC-604, Respondent Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called Respondent), its officers, representatives, agents, servants, employees and all members and persons acting in concert or participation with it will not:

(a) Picket at or in the vicinity of Sears, Roebuck and Co.'s retail stores at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester Avenue, or at Sears, Roebuck and Co.'s warehouses at 8950 Pershall or 1024 South Vandeventer, all in the Metropolitan Area of the City of St. Louis, in the State of Missouri, or at Sears, Roebuck and Co.'s stores at 1001 State Street in East St. Louis, Illinois, and 309 Piasa in Alton, Illinois.

(b) Picket at or in the vicinity of the premises known and numbered as 924 Cerre Street in the City of St. Louis and State of Missouri.

(c) In any manner or by any means including picketing, orders, directions, instructions, requests or appeals, however given, made or imparted or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engage in, or induce or encourage any individual employed by Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co. and May Department Stores Company, or by any other person engaged in commerce or in any industry affecting commerce to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, ar-

ticles, materials or commodities or to perform any service, or in any manner or by any means threaten, coerce or restrain Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co., and May Department Stores Company or any other person engaged in commerce or an industry affecting commerce

where in connection with the acts and conduct set out in subparagraphs (a), (b) and (c) hereof an object thereof is to force or require Sears, Roebuck and Co., Terminal Freight Cooperative Association, Terminal Freight Handling Co., and May Department Stores Company, or any other person to cease using, selling, handling, transporting or otherwise dealing in the products of or to cease doing business with Be-Rite Delivery Service, Inc. or Sears, Roebuck and Co.

2. In the event that the Regional Director for the Fourteenth Region of the Board, after investigation of an alleged breach by Respondent of any of the provisions of paragraph 1 of this Stipulation, thereupon files with the Court an Affidavit stating that he has found probable cause to believe that Respondent has breached the provisions of paragraph 1 of this Stipulation, the Court may, forthwith enter a Temporary Injunction against said Respondent in the form set forth in Exhibit (A) attached hereto. In this connection, Respondent waives a further hearing before the Court, as well as the making of Findings of Fact and Conclusions of Law by the Court.

3. This case shall in the meanwhile remain on the Docket of this Court and upon compliance by Respondent with its obligation undertaken hereunder and upon the final disposition of the matters pending before the Board, as aforesaid, the Petitioner shall cause this proceeding to be dismissed.

4. The making and execution of this Stipulation does not constitute an admission by Respondent that it has engaged in unfair labor practices.

Respondent Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by signing this Stipulation, acknowledges receipt of a copy of the petition upon it and fully enters its appearance in Case No. 70C 317(2) now pending before this Court.

Dated at St. Louis, Missouri, this 9th day of July 1970.

/s/ JOHN S. STEVENS
John S. Stevens
*Attorney for Petitioner*

/s/ (Illegible)
*Attorney for Respondent*

Approved and so ordered this 9th day of July, 1970.

/s/ JAMES H. MEREDITH,
*United States District Judge.*

## APPENDIX I.

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

| | |
|---|---|
| JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, *Petitioner*, vs. MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondent*. | Civil No. 70 C 317(2) |

## NOTICE OF APPEAL.

Notice is hereby given that Sears, Roebuck and Co. ("Sears"), charging party in the underlying proceedings before the National Labor Relations Board, and maintaining that it is a proper party to this suit, hereby appeals to the United States Court of Appeals for the Eighth Circuit from the Order of this Court entered on July 8, 1970, insofar as that Order denies the motion of Sears to intervene herein, and insofar as the said Order refuses

to accept the Entry of Appearance of Sears as a party and refuses to accord Sears status as a party herein.

Lawn, Rice, Tucker, Allen & Cruse
By /s/ D. J. Sullivan
155 Railway Exchange Building
611 Olive Street
St. Louis, Missouri 63101
231-5833

*Attorneys for Sears, Roebuck and Co., proposed Intervenor and Charging Party in the underlying Labor Board proceeding*

(Dated: July 10, 1970)

## APPENDIX M.

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

| | |
|---|---|
| JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, *Petitioner*, *vs.* MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondent*. | Civil No. 70 C 317(2) |

### NOTICE OF APPEAL.

Notice is hereby given that Terminal Freight Handling Company ("Terminal") and Terminal Freight Cooperative Association ("Association"), charging parties in the underlying proceedings before the National Labor Relations Board, and maintaining they are parties to this suit, hereby appeal to the United States Court of Appeals for the Eighth Circuit from the Order of this Court entered on July 9, 1970, insofar as that Order denies the motion of Terminal and Association to be made full parties Litigant herein, and insofar as the said Order refuses to

accept the appearance and participation of Terminal and Association as parties and refuses to accord Terminal and Association rights and status as parties herein.

GERALD TOCKMAN
McMAHON & BERGER
7701 Forsyth Blvd., Suite 1153
St. Louis, Missouri 63105

JERRY KRONENBERG
BOROVSKY, EHRLICH AND KRONENBERG
111 West Washington Street
Chicago, Illinois 60602

*Attorneys for Terminal Freight Handling Company and Terminal Freight Handling Association, proposed parties-intervenors and charging Parties in the underlying Labor Board proceedings*

(Dated: July 16, 1970)

## APPENDIX N.

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

| | |
|---|---|
| MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, (Be-Rite Delivery Service, Inc.) and SEARS, ROEBUCK AND Co. | Case No. 14-CC-603 |
| MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and TERMINAL FREIGHT COOPERATIVE ASSOCIATION AND TERMINAL FREIGHT HANDLING COMPANY AND MAY DEPARTMENT STORES, INC. | Case No. 14-CC-604 |

## SETTLEMENT STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers of America (herein called Respondent), Sears, Roebuck and Co. (herein called Sears), and Terminal Freight Cooperative Association, Terminal Freight Handling Company and May Department Stores, Inc. (herein jointly called Terminal), and the General Counsel of the National Labor Relations Board, that:

1. Upon a charge filed by Sears on June 10, 1970, and served upon Respondent on or about the same date in Case No. 14-CC-603 and a first amended charge filed by Sears on June 23, 1970, and served upon Respondent on or about the same date in Case No. 14-CC-603 and upon a charge filed by Terminal on June 12, 1970, and served upon Respondent on or about June 15, 1970, in Case No. 14-CC-604, receipt of which charges and amended charge is hereby acknowledged by Respondent, the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board (herein called the Board) by the Regional Director for Region 14, acting pursuant to authority granted in Section 10(b) of the National Labor Relations Act, 29 U. S. C., Sec. 151, *et seq.* (herein called the Act), and Sections 102.15 and 102.33 of the Board's Rules and Regulations, Series 8, as amended, issued an Order Consolidating Cases and Complaint against the Respondent on the 2nd day of July 1970, together with a Notice of Hearing thereon. True copies of the aforesaid Order Consolidating Cases, Complaint and Notice of Hearing were duly served by registered mail on the Respondent, Sears and Terminal on July 2, 1970, receipt of which is hereby acknowledged by all parties.

2A. Be-Rite Delivery Service, Inc. (hereinafter called Be-Rite) is and has been at all times material herein, a corporation duly authorized to do business in the State of Missouri.

B. At all times material herein, Be-Rite has maintained offices and places of business at 8950 Pershall Road, 1911 Locust and 1024 South Vandeventer in the Metropolitan Area of the City of St. Louis and State of Missouri. Be-Rite is, and has been at all times material herein, engaged in the transportation and distribution of goods, wares and merchandise for Sears.

C. During the year ending June 1, 1970, which period is representative of its operations during all times material herein, Be-Rite, in the course and conduct of its business operations, furnished services to Sears valued in excess of $50,000.

3A. Sears is, and has been at all times material herein, a corporation duly authorized to do business in the States of Missouri and Illinois.

B. At all times material herein, Sears has maintained its places of business at 1408 North Kingshighway, 3708 South Grand, 15 Crestwood Plaza, 490 Northwest Plaza, 7412 Manchester, 8950 Pershall and 1024 South Vendeventer, all in the Metropolitan Area of the City of St. Louis and in the State of Missouri. Sears also maintains places of business at 1001 State Street in the City of East St. Louis, Illinois, and 309 Piasa in the City of Alton, Illinois. Sears is, and has been at all times material herein, engaged in the sale and distribution of clothing, furniture, tools, electrical appliances, sporting goods and other merchandise.

C. During the years ending June 1, 1970, which period is representative of its operations during all times material herein, Sears, in the course and conduct of its business, sold and distributed at retail, goods, wares and merchandise valued in excess of $500,000, at each location in paragraph 3B.

D. During the year ending June 1, 1970, which period

is representative of its operations during all times material hereto, Sears, in the course and conduct of its business operations, purchased and caused to be transported and delivered at each of its places of business in the States of Missouri and Illinois in paragraph 3B, clothing, furniture, tools, electrical appliances, sporting goods and other merchandise valued in excess of $50,000, of which goods and materials valued in excess of $50,000, were transported and delivered to each of its places of business in the Metropolitan Area of St. Louis, directly from points located outside the States respectively of Missouri and Illinois.

4A. Terminal Freight Cooperative Association (hereinafter called Association) is a nonprofit association consisting of 46 companies including, *inter alia*, May Department Stores, Inc. (hereinafter called May), and Sears.

B. Association is engaged in the business of receiving less-than-carload and less-than-truckload shipments, consolidating such shipments into carload lots and reshipping goods to its members' places of business in various locations throughout the United States.

C. Members of the Association individually have annual gross sales in excess of $500,000, and each such member, including May and Sears, annually receives goods, wares and merchandise in Missouri valued in excess of $50,000, directly from points located outside the State of Missouri.

5A. Terminal Freight Handling Company (hereinafter called Handling Company), is a nonprofit Delaware corporation authorized to do business in the State of Missouri.

B. Handling Company is engaged in the handling, consolidation and shipment of freight and acts as the manager of Association. It operates 36 facilities in 24 states and the District of Columbia including a terminal at 924 Cerre Street in St. Louis, Missouri. Handling Company

uses employees furnished by Pine Transportation Company to do its stevedoring work.

C. Handling Company annually receives in excess of $1 million from services supplied to members of the Association in connection with the movement of freight in interstate commerce.

6A. May is a retail department store enterprise authorized to do business in the State of Missouri.

B. May maintains retail department stores in the Metropolitan Area of the City of St. Louis, each of which stores individually and collectively annually sells goods, wares and merchandise valued in excess of $1 million.

C. May annually purchases from suppliers in states other than the State of Missouri, goods, wares and merchandise valued in excess of $50,000, which goods are shipped from said other states directly to May at each of its facilities in the State of Missouri.

7A. Dependable Service Company (hereinafter called Dependable), has been at all times material herein a corporation authorized to do business in the State of Missouri.

B. Dependable maintains an office and place of business at 1024 South Vandeventer in the City of St. Louis and State of Missouri where it is and has been at all times material herein engaged in the business of repairing electrical appliances.

C. During the year ending June 1, 1970, which period is representative of its operations at all times material hereto Dependable, in the course and conduct of its business operations, furnished services to Sears valued in excess of $50,000.

8A. Action Service Company (hereinafter called Action), is and has been at all times material herein a corporation authorized to do business in the State of Missouri.

B. Action at all times material herein has maintained an office and place of business at 3528 Wismer Street in the City of St. Louis and State of Missouri where it is and has been at all times material herein engaged in the business of repairing electrical appliances.

C. During the year ending June 1, 1970, which period is representative of its operations at all times material herein, Action, in the course and conduct of its business operations, purchased and caused to be delivered to its place of business at 3528 Wismer Street electrical and merchanical parts and appliances valued in excess of $50,000, which parts and appliances were delivered directly to it in the State of Missouri from points located outside the State of Missouri.

9. Each Be-Rite, Sears, Association, Handling Company, May, Dependable and Action is now and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and a person in commerce or in an industry affecting commerce within the meaning of Section 8(b)(4) of the Act.

10. Respondent is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

11. All parties hereto waive the filing of answer, hearing, Trial Examiner's Decision, the filing of exceptions and brief, oral argument before the Board, the making of findings of fact or conclusions of law by the Board, and all further and other proceedings to which the parties may be entitled under the Act or the Board's Rules and Regulations.

12. This stipulation together with the charges, amended charge, complaint and notice of hearing shall constitute the entire record herein.

13. Upon this stipulation and the record herein as described in paragraph 12 above and without any further notice of proceedings herein, the Board may forthwith enter an order providing as follows:

The Respondent, Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, successors and assigns:

(1) Shall not:

(a) In any manner or by any means including picketing, engage in or induce employees of Sears, Roebuck and Co., Dependable Service Company and Action Service Company or any other person in commerce or in an industry affecting commerce to engage in a strike or refusal to work or threaten, coerce or restrain the above-referred to companies or any other person in commerce or in an industry affecting commerce where in either case an object thereof is to force or require said persons to cease doing business with Be-Rite Delivery Service, Inc.

(b) In any manner or by any means including picketing, engage in or induce employees of Terminal Freight Cooperative Association, Terminal Freight Handling Company, Pine Transportation Company or any other person in commerce or in an industry affecting commerce to engage in a strike or refusal to work or threaten, coerce or restrain the above-referred to companies or any other person in commerce or in an industry affecting commerce where in either case an object thereof is to force or require said persons to cease using, handling, transporting, dealing in the products of or doing business with Sears, Roebuck and Co.

(2) Shall take the following affirmative action to effectuate the policies of the National Labor Relations Act, as amended:

(a) Post in conspicuous places at the business offices and meeting halls including all places where notices to members are customarily posted, a copy of the notices attached hereto and marked "Appendix A" and "Appendix B." Copies of the notices to be furnished by the Regional Director for Region 14 after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced or covered by any other material.

(b) Mail to the Regional Director for Region 14 signed copies of the notice marked "Appendix A" for posting, if Sears, Roebuck and Co., Dependable Service Company and Action Service Company are willing, and mail to the Regional Director for Region 14 signed copies of the notice marked "Appendix B" for posting if Terminal Freight Cooperative Association and Terminal Freight Handling Company and Pine Transportation Company are willing, in places where notices to employees are customarily posted. Copies of said notices, to be furnished by the Regional Director for Region 14 shall, after having been signed by the Respondent's representative, be forthwith returned to the Regional Director for such posting by Sears, Roebuck and Co., Dependable Service Company, Action Service Company, Terminal Freight Cooperative Association and Terminal Freight Handling Company and Pine Transportation Company.

(c) Notify the Regional Director for Region 14, in writing, within 10 days from the date of this order, what steps the Respondent has taken to comply herewith.

14. The United States Court of Appeals for any appropriate circuit may, upon application by the Board, enter

its judgment enforcing the order of the Board in the form set forth in paragraph 13 thereof. The Respondent waives all defenses to the entry of the judgment, including compliance with the order of the Board, and its right to receive notice of the filing of an application for the entry of such judgment, provided that the judgment is in the words and figures set forth in paragraph 13 hereof. However, the Respondent shall be required to comply with the affirmative provisions of the Board's order upon entry of the judgment only to the extent that it has not already done so.

15. This stipulation contains the entire agreement between the parties, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to it, except that it is understood that the failure to file an answer to the complaint and the signing of this stipulation by the Respondent do not constitute an admission that Respondent has violated the Act.

16. This stipulation, together with other documents constituting the record as described in paragraph 12 hereof, shall be filed with the Board. The stipulation is subject to the approval of the Board, and it shall be of no force and effect until the Board has granted such approval. Upon the Board's approval of the stipulation, the Respondent will immediately comply with the provisions of the order as set forth in paragraph 13 hereof.

Signed at St. Louis (City) Missouri (State)

July 24, 1970 (Date)

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

By /s/ NORMAN W. ARMBRUSTER
*Attorney*
7 N. 7th Street
(Street)
St. Louis Missouri
(City) (State)

Signed at _____
(City) (State)

_____
(Date)

SEARS, ROEBUCK AND CO.

By _____
*Attorney*

_____
(Street)

_____
(City) (State)

Signed at _____
(City) (State)

_____
(Date)

TERMINAL FREIGHT COOPERATIVE ASSOCIATION AND TERMINAL FREIGHT HANDLING COMPANY AND MAY DEPARTMENT STORES, INC.

By _____
*Attorney*

_____
(Street)

_____
(City) (State)

Approval by the General Counsel recommended:

/s/ JOHN S. STEVENS
John S. Stevens, *Attorney*
Region 14
National Labor Relations Board
1040 Boatmen's Bank Building
314 North Broadway
St. Louis, Missouri 63102
Date:

Approved:

.....

Office of the General Counsel
National Labor Relations Board
Washington, D. C. 20570

.....

Date

## Appendix A.

**Notice to**
**Employees and Members**
**Posted by Order of the**
**National Labor Relations Board**
**an Agency of the United States Government**

**We will not** in any manner or by any means including picketing, engage in or induce employees of Sears, Roebuck and Co., Dependable Service Company and Action Service Company or any other person in commerce or in an industry affecting commerce to engage in a strike or refusal to work nor will we threaten, coerce or restrain the above-referred to companies or any other person in commerce or in an industry affecting commerce where in either case an object thereof is to force or require said persons to cease doing business with Be-Rite Delivery Service, Inc.

Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

(Labor Organization)

Dated ..... By .....

(Representative) (Title)

**This Is An Official Notice and Must Not Be Defaced by Anyone**

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If members have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 1040 Boatmen's Bank Building, 314 North Broadway, St. Louis, Missouri 63102, MAin 2-4149.

## APPENDIX B.

**Notice To**
**Employees and Members**
**Posted By Order Of The**
**National Labor Relations Board**
**an agency of the United States Government**

**WE WILL NOT in any manner or by any means including picketing, engage in or induce employees of Terminal Freight Cooperative Association, Terminal Freight Handling Company, Pine Transportation Company, or any other person in commerce or in an industry affecting commerce to engage in a strike or refusal to work nor will we threaten, coerce or restrain the above-referred to companies or any other person in commerce or in an industry affecting commerce where in either case an object thereof is to force or require said persons to cease using, handling, transporting, dealing in the products of or doing business with Sears, Roebuck and Co.**

**Miscellaneous Drivers and Helpers Union, Local No. 610, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America**
**(Labor Organization)**

**Dated** ..... **By** .....
**(Representative) (Title)**

**This Is An Official Notice And Must Not Be Defaced By Anyone**

**This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.**

**If members have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 1040 Boatmen's Bank Building, 314 North Broadway, St. Louis, Missouri 63102, MAin 2-4149.**

# APPENDIX O.

UNITED STATES COURT OF APPEALS
for the Eighth Circuit

| | |
|---|---|
| JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, *Petitioner-Appellee,* *vs.* MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL No. 610, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondent-Appellee,* SEARS, ROEBUCK AND CO., *Appellant.* | No. 20407 |

## APPLICATION OF APPELLANT SEARS, ROEBUCK AND CO. FOR A STAY.

To the Honorable, the Judges of the United States Court of Appeals for Eighth Circuit:

The Appellant Sears, Roebuck and Co. ("Sears") filed the charges against the Teamsters Local that are the subject of the underlying Labor Board proceeding. Sears charged that the Teamsters were illegally picketing its places of business, causing Sears' employees and others

to go on strike in violation of the secondary boycott provisions of the Labor Act. The Regional Director of the Board, having investigated Sears' charge and finding reasonable cause to believe it was true, filed this suit in the District Court for interim injunctive relief against the Teamsters under Section 10(l) of the National Labor Relations Act, as amended, 29 USC Sec. 160(l), pending resolution of the merits in proceedings before the Board. Sears maintained in the District Court that it is a proper party to the Regional Director's suit and sought to participate as a party and to have its party status accepted by the District Court. On July 8, 1970, the District Court entered an Order which, among other things, denied Sears' Motion to have its Entry of Appearance as a party accepted, and rejected its request to be treated as a party to the proceedings in the District Court; the Order also denied Sears' Motion, under Rule 24(a) FRCP, to intervene as of right as a party in the suit. This appeal is taken from so much of the District Court's Order as refuses to accept Sears' Entry of Appearance as a party and refuses to accord Sears party status, as an intervenor or otherwise.

Sears now respectfully applies for a stay of the execution of that portion of the Order from which appeal has been taken, that is to say, Sears seeks to stay the application or effectuation of the District Court's Order, insofar as it excludes Sears as a party to the injunction suit pending in the District Court. Sears is here requesting that the Court order that pending resolution of this appeal, Sears be accorded party status in the proceedings that are still on the District Court's docket. As grounds for this Motion for Stay, Sears represents to the Court the following:

*First.* Sears has heretofore on a number of occasions requested the District Court for essentially the same re-

lief that is being sought in this Application, that is for leave to be accepted as a party during the pendency of this suit for interlocutory relief. The District Court, informally in chambers on June 30, 1970, and again on July 8 and 9, 1970, has made it clear that it does not intend to permit Sears to be accepted as a party on an interim basis.

*Second.* The statute under which this suit was brought (Section 10(l) of the National Labor Relations Act, as amended, 29 USC Sec. 160(l)), confers upon Sears, as charging party, the right to appear by counsel in that suit and present relevant testimony. The District Court's Order, by denying to Sears status as a party in that suit, has denied Sears the right which the statute accords to it. It is respectfully submitted that in this the District Court erred, that authority supports the party status of Sears, and that there is a probability that the Order in this regard will be reversed on this appeal.

*Third.* Pending disposition of this appeal, irreparable injury may well result to Sears if the execution of the District Court's Order that is appealed from is not stayed, and if Sears continues to be excluded from party status in the proceedings below, which are still pending on the District Court's docket. By contrast, no discernible injury or prejudice can result to the other parties to the suit by the mere acceptance of Sears as a party pending resolution of the merits on appeal.

*Fourth.* The entry of the Order appealed from has already adversely affected the substantial rights of Sears.

(a) On the day following entry of the Order, the government and the union attended a hearing, in chambers, in the District Court, at which a proposed Stipulation was discussed, revised, agreed to and then ordered approved by the District Court. This was an important and critical

step in the litigation, but Sears received no notice of the hearing, had no knowledge that it was occurring and learned of it only after the signed and approved Stipulation was an accomplished fact. This step was taken in the litigation notwithstanding the directions in the District Court's Order of July 8, 1970, which, while denying party status to Sears, directed that it be "notified of all actions by the Petitioner and Respondent . . . permitted at all times to introduce evidence, appear at hearings, and file briefs and keep the Court advised of any matters that should be brought to the attention of the Court."

(b) The District Court had further ordered that the Teamsters local show cause at a hearing to be held on July 15, 1970, why a temporary injunction should not be issued. At this scheduled hearing on the Order to Show Cause, Sears wished to and was prepared to appear and present testimony, documentary evidence, and argument in support of the issuance of a temporary injunction. With the approval of the Stipulation at the hearing in chambers from which Sears was barred, the hearing on the Order to Show Cause was cancelled, leaving Sears no opportunity to be heard on the merits of the application for injunctive relief.

WHEREFORE, Sears respectfully prays:

(a) That an Order of this Court issue staying the execution of so much of the Order of the United States District Court for the Eastern District of Missouri, Eastern Division, that was entered in this cause on July 8, 1970, as refuses to accept the Entry of Appearance of Sears as a party, refuses to accord Sears status as a party and denies Sears' Motion to Intervene of right as a party to this suit;

(b) That the Court establish a briefing schedule to expedite the appeal herein; and

(c) That the Court grant such other relief as it may deem appropriate.

LEWIS, RICE, TUCKER, ALLEN & CHUBB,
By /s/ D. J. SULLIVAN,
D. J. Sullivan,
611 Olive Street,
St. Louis, Missouri 63101,
231-5833,
*Attorneys for Appellant*
*Sears, Roebuck and Co.*

STATE OF MISSOURI, }
CITY OF ST. LOUIS. } ss.

Gwen Froeschner, being duly sworn upon her oath, deposes and says:

1. That she is a citizen of the United States and a resident of the County of St. Louis, Missouri and over the age of eighteen years and not a party to or interested in the within suit; that her business address is 1555 Railway Exchange Building, St. Louis, Missouri 63101.

2. That on July 21, 1970, she served the within Application of Appellant Sears, Roebuck and Co. for a Stay and supporting papers, consisting of Memorandum of Points and Authorities in Support of Application, and Affidavit of D. J. Sullivan, on all other parties to this suit, by placing true copies thereof, enclosed in sealed envelopes, with postage thereon fully prepaid, in the United States mail, in St. Louis, Missouri, addressed as follows:

John S. Stevens, Esq.,
National Labor Relations Board,
Fourteenth Region,
1040 Boatmen's Bank Building,
314 North Broadway,
St. Louis, Missouri 63102;

Mr. Joseph H. Solien, Regional Director,
National Labor Relations Board,
Fourteenth Region,
1040 Boatmen's Bank Building,
314 North Broadway,
St. Louis, Missouri 63102;

Norman W. Armbruster, Esq.,
c/o Messrs. Wiley, Craig, Armbruster & Wilburn,
Suite 717 Buder Building,
Market Street at Seventh,
St. Louis, Missouri 63101.

/s/ GWEN FROESCHNER,
Gwen Froeschner.

Subscribed and sworn to before me this 21st day of July, 1970.

This act performed in the City of St. Louis which adjoins St. Louis County, for which I was commissioned.

/s/ LAWRENCE ALEN WALDMAN,
*Notary Public.*

My commission expires: 3/20/73.

## APPENDIX P.

UNITED STATES COURT OF APPEALS
for the Eighth Circuit

September Term, 1969

No. 20407

JOSEPH H. SOLIEN, ETC.
*Appellee,*

*vs.*

MISCELLANEOUS DRIVERS & HELPERS UNION, ETC., SEARS ROEBUCK & COMPANY,
*Appellant.*

No. 20418

JOSEPH H. SOLIEN, ETC.,
*Appellee,*

*vs.*

MISCELLANEOUS DRIVERS & HELPERS UNION, ETC., TERMINAL FREIGHT HANDLING COMPANY, et al.,
*Appellant.*

Appeals from the United States District Court for the Eastern District of Missouri.

The Court has carefully considered motions filed by counsel for appellant in Cause No. 20407 seeking a stay of an order entered by the United States District Court for the Eastern District of Missouri on July 8, 1970 and, additionally, seeking to have the submission of this appeal to a panel of Judges of the Court expedited. Being fully advised in the premises it is now here ordered that the

motion for stay of the District Court's order be, and it is hereby, denied. It is further ordered that appellant's motion seeking to have the submission of this appeal expedited be, and it is hereby, denied. The Clerk of this Court is directed to set this appeal for oral argument and submission to a panel of Judges of the Court in regular order.

The Court has also considered a motion seeking consolidation of our appeals Nos. 20407 and 20418. Being fully advised in the premises it is now here ordered that the motion to consolidate be, and it is hereby granted. These two appeals are consolidated and will be heard on one joint appendix and joint briefs insofar as possible. The cases will also be calendared for joint oral argument.

August 12, 1970

## APPENDIX Q.

UNITED STATES DISTRICT COURT
For the Eastern District of Missouri
Eastern Division

| | |
|---|---|
| SEARS, ROEBUCK AND CO. and TERMINAL FREIGHT COOPERATIVE ASSOCIATION AND TERMINAL FREIGHT HANDLING CO., *Plaintiffs,* *vs.* JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board, *Defendant.* | No. 70 C 356(1) |

### COMPLAINT FOR INJUNCTION.

Comes now plaintiff, Sears, Roebuck and Co. ("Sears"), by its attorneys, Lewis, Rice, Tucker, Allen & Chubb, D. J. Sullivan, and Lederer, Fox and Grove, and Terminal Freight Handling Company ("Terminal Handling") and Terminal Freight Cooperative Association ("Terminal Co-op"), by their attorneys Gerald Tockman and Borovsky, Ehrlich & Kronenberg, and for their Complaint against defendant Joseph H. Solien, Regional Director of the

Fourteenth Region of The National Labor Relations Board, allege as follows:

1. Plaintiff Sears is a corporation duly organized under and existing by virtue of the laws of the State of New York, and at all times herein has been and is qualified to do business in the State of Missouri with retail stores and other facilities located throughout the State of Missouri. The events here involved concern the retail stores and warehouses of plaintiff Sears located within the St. Louis, Missouri area, and within the jurisdiction of this Court.

2. Plaintiff Terminal Handling is a Delaware corporation and at all times herein has been and is qualified to do business in the State of Missouri. Plaintiff Terminal Co-op is a not-for-profit association authorized to do business in the State of Missouri. Plaintiffs Terminal Handling and Terminal Co-op operate and use a truck terminal facility located at 924 Cerre Street, St. Louis, Missouri, within the jurisdiction of this Court.

3. All three plaintiffs are persons and employers engaged in commerce and in an industry affecting commerce within the scope and meaning of Section 8(b)(4) of the National Labor Relations Act, 29 U. S. C. Section 158(b)(4), hereinafter referred to as the Act. They are also persons aggrieved by agency action within the meaning of 5 U. S. C. A., Section 702. This Court has original jurisdiction of this action under 5 U. S. C. A., Sections 702 and 703, under Section 24(8) of the Judicial Code, 28 U. S. C. A., Section 1337 and under 28 U. S. C. A., Section 1361.

4. On June 10, 1970, plaintiff Sears and on June 12, 1970, plaintiffs Terminal Handling and Terminal Co-op filed unfair labor practice charges with defendant, which were assigned Case Nos. 14-CC-603 and 604, respectively, alleging that Teamsters Local 610 (herein "Local 610")

was engaging in unfair labor practices within the meaning of Section 8(b)(4) of the Act, by illegally picketing plaintiffs' places of business and causing plaintiffs' employees and others to go out on strike. Defendant thereafter investigated the said charges and concluded that the charges were true, and that Local 610 had been engaging in violations of law, as charged.

5. On June 27, 1970, defendant issued a Complaint before the National Labor Relations Board against Local 610, alleging violations of the Act as charged and seeking a remedy before the Board. That Complaint named the plaintiffs as formal parties to the proceedings before the Board, since they were the charging parties. The Complaint was accompanied by a Notice of Hearing calling for a hearing before a Trial Examiner, to convene in St. Louis on July 27, 1970.

6. Under the procedures of the National Labor Relations Board, the charging party in a Board proceeding such as that which the plaintiffs filed with defendant, as heretofore described, is a party to the case and entitled to participate in the proceedings.

7. Since the issuance of the Complaint by the defendant against Local 610, and even before the issuance of the said Complaint, the defendant and his attorneys have been and are engaging in discussions looking toward settlement of the proceedings before the Labor Board. On June 22, 1970, the defendant served upon these plaintiffs a so-called "informal" settlement, with the written announcement that defendant intended to approve the proposed settlement unless the plaintiffs interposed written objections to the settlement within five days. The proposed settlement had never theretofore been discussed with or shown to plaintiffs, notwithstanding that plaintiffs were the charging parties in the case which defendant proposed to settle.

The proposed settlement provided for no cease and desist order and no court decree, and was unacceptable to the plaintiffs as charging parties. The plaintiffs filed with defendant written objections to the proposed settlement and advised defendant in writing as to what they would consider to be a proper settlement to remedy the violations that were occurring. Plaintiffs have never received an acknowledgment of their objections or their proposed settlement.

8. Meanwhile, on July 7, 1970, the defendant tendered to Local 610 a second form of settlement agreement prepared by the defendant, undertaking to dispose of the case. This second proposed settlement agreement was executed by Local 610 and returned to the defendant on July 8, 1970. The plaintiffs have never seen the proposed second settlement that was tendered to and signed by Local 610 and had no knowledge until July 16, 1970, of its having even been tendered to Local 610. No discussions whatever were had with plaintiffs in regard to the second proposed settlement of its charge, notwithstanding plaintiffs' status as charging parties and their full party standing before the Labor Board.

9. On July 9, 1970, plaintiffs Terminal Handling and Terminal Co-op, and on July 13, 1970, plaintiff Sears, through counsel requested defendant to advise plaintiff of any discussions, negotiations or other steps taken in the case looking toward settlement; and that if settlement was being discussed, the company should be informed of that fact and should be permitted to be present in any discussions relating to settlement. Defendant, through counsel, refused to permit plaintiffs to be present at any settlement negotiations or discussions, notwithstanding plaintiffs' status as charging parties in the Board proceedings.

10. On July 14, 1970, plaintiff Sears repeated the re-

quest, in writing, that it be advised of settlement discussions and permitted to be present at any such discussions. A copy of plaintiff's letter request is attached and marked Exhibit A.

11. On July 15, 1970, plaintiff Sears, by counsel, conferred with defendant and repeated the request, theretofore made orally and in writing, that it be advised of settlement discussions and be permitted to attend any such discussions. Plaintiff also requested that, in order to prepare for trial, and in order to evaluate the merits of any proposed settlement and the effectiveness of any proposed remedy, it be apprised of the evidence relating to the unfair labor practice that defendant had found to have been committed by Local 610, and that plaintiff Sears be furnished with copies of affidavits of witnesses who presented such evidence.

12. On July 15, 1970, defendant informed plaintiff Sears that he would refuse to advise plaintiff Sears of any settlement negotiations; that he would refuse to permit plaintiff Sears to attend or participate in any settlement discussions; and that he would refuse to provide plaintiff Sears with the evidence tending to support the defendant's conclusion that Local 610 had violated the Act. He refused to provide plaintiff Sears with the requested affidavits of witnesses.

13. The practice of defendant, as Regional Director of the Board, in advance of hearing in unfair labor practice cases, is to have his counsel to review with counsel for charging parties the government's trial brief, and make the charging party aware of the names of government witnesses and a summary of their expected testimony. On July 15, 1970, defendant advised plaintiff Sears that he did not believe he would follow that practice in the case of the charges filed by plaintiffs. The defendant also refused

to provide plaintiff Sears with a copy of the government's trial brief.

14. As parties to the proceedings before the Board, plaintiffs are intimately concerned with a proper remedy of the unfair labor practices that have been committed against them by the respondent union, Local 610. They have been excluded from any and all discussions or deliberations concerning settlement of their charges, and are being left out of any part, and being denied any voice, in shaping the form or content of settlement looking toward remedy for the unfair labor practices of which they were the victims.

15. On information and belief, based on statements made by defendant and his counsel, settlement discussions and negotiations are continuing between the defendant and the respondent Local 610, and plaintiffs have no knowledge or information concerning when or where these discussions are occurring, or concerning the form and content of any such settlement discussions, or the form and substance of any remedy that may be under consideration in these settlement discussions. Plaintiffs have definite views and proposals to make concerning the settlement of the case and are being prevented from even raising them in settlement discussions.

16. By effectively blocking plaintiffs from discussions or participation, or having any voice, in reference to settlement of the Board proceedings, defendant is violating plaintiffs' rights as charging parties under the National Labor Relations Act, as amended, and under the National Labor Relations Board's Rules and Regulations. If the settlement negotiations or discussions continue, plaintiffs will be irreparably injured, in that they will be denied any part in forming or shaping any settlement that may be entered into, and they will be left in the position of being

handed an accomplished fact after a settlement will have been agreed to between the defendant and Local 610. The terms of the prior settlement, heretofore described in paragraph 7, which defendant would have been willing to approve, were wholly ineffectual to remedy the serious violations of law that have occurred. It can be anticipated that unless the plaintiffs are accepted as parties to settlement discussions, there is strong probability that the violations of law that have occurred will not be effectively remedied, and the plaintiffs, as victims of Local 610's unfair labor practice, will be denied a full remedy.

WHEREFORE, plaintiffs respectfully pray:

1. That this Court issue an order to the defendant to be and appear in a division of this Court on a date and at a time to be stated by the Court, then and there to show cause, if any there be, why the defendant should not be enjoined from:

(a) Engaging in settlement negotiations with Teamsters Local 610 or its attorneys with regard to the disposition of Board Case Nos. 14-CC-603 and 604, without the knowledge, direct and immediate participation of plaintiffs, and without providing and disclosing to plaintiffs evidence material and relevant to an informed judgment concerning such settlement and/or disposition; and from

(b) Receiving, accepting or approving any settlement agreement or other such agreement executed or tendered for execution by Teamsters Local 610 or its attorneys, with regard to the disposition and/or settlement of Board Case Nos. 14-CC-603 and 604, without the knowledge, direct and immediate participation and consent of plaintiffs, and without providing and disclosing to plaintiffs evidence material and relevant to informed judgment concerning settlement and/or other disposition.

2. That in the meantime and until further order of this Court, the defendant and his attorneys be temporarily restrained from engaging in any of the said settlement negotiations or other acts or matters heretofore referred to in this prayer.

3. That the Court grant such other, further and different relief as may be just and proper in the premises.

.....

D. J. SULLIVAN

STATE OF MISSOURI
CITY OF ST. LOUIS } ss.

Before me, a notary public for the City and State aforesaid, personally appeared D. J. Sullivan, to me personally known, and who being by me sworn upon oath, did state that he has read the foregoing Complaint and that the allegations therein are true and correct to the best of his information, knowledge and belief.

Subscribed and sworn to before me this 17th day of July, 1970.

.....

*Notary Public*

My commission expires .....

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*Attorneys for Plaintiffs, Terminal Freight Cooperative Association and Terminal Freight Handling Company*

## APPENDIX B.

IN THE UNITED STATES DISTRICT COURT
Eastern District of Missouri
Eastern Division

| | |
|---|---|
| SEARS, ROEBUCK AND CO., and TERMINAL FREIGHT COOPERATIVE ASSOCIATION, and TERMINAL FREIGHT HANDLING CO., *Plaintiffs,* *vs.* JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, *Defendant.* | No. 70 C 356(1). |

### ORDER.

Motion of defendant to dismiss the complaint for lack of jurisdiction, sustained, and said cause is dismissed for lack of jurisdiction.

/s/ ROY W. HARPER
*U. S. District Judge*

(Dated: July 30, 1970)

# APPENDIX S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970

SEARS, ROEBUCK AND COMPANY, ET AL.

*vs.*

JOSEPH H. SOLIEN, REGIONAL DIRECTOR OF THE FOURTEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD.

## MEMORANDUM OF THE REGIONAL DIRECTOR IN OPPOSITION TO APPLICATION FOR TEMPORARY INJUNCTION.

Petitioners seek to stay the Board's Regional Director from conducting further proceedings in connection with a proposed settlement of unfair labor practice charges which petitioners have filed against a union, pending a decision by the court of appeals of their appeal from an order of the district court dismissing their complaint to enjoin such settlement proceedings. The relevant facts may be summarized as follows:

In June 1970, petitioners filed unfair labor practice charges with the Regional Director alleging that Teamsters Local 610 was conducting a secondary boycott in violation of Section 8(b)(4)(B) of the National Labor Relations Act (29 U. S. C. 158(b)(4)(B)). The Regional Director, finding reasonable cause to believe that the charges were true, issued a complaint and, pending a final determination by

the Board, petitioned the district court, pursuant to Section 10(l) of the Act (29 U. S. C. 160(l)), for the temporary injunctive relief.

The Union then entered into a stipulation with the Regional Director, which provided for a cessation of its allegedly illegal activity pending a final resolution of the unfair labor practice charges by the Board, and for the entry of a temporary restraining order if the stipulation were violated. The district court approved the stipulation on July 9, 1970, and petitioners have appealed from that order.

The Union also entered into negotiations with the Regional Director in an effort to settle the unfair labor practice case. The agency favors formal settlements under which, as the Board's rules state, "the parties agree to waive their rights to hearing and agree further that the Board may issue an order requiring the respondent to take action appropriate to the terms of the settlement." "Ordinarily the formal settlement agreement also contains the respondent's consent to the Board's application for the entry of a decree by the appropriate circuit court of appeals enforcing the Board's order." 29 C. F. R. 101.9(b)(1).

Under the rules, a charging party unwilling to join in a proposed settlement agreement is given a copy thereof and has five days to file written objections; if the Regional Director approves the settlement, he gives the charging party a written statement of his reasons. 29 C. F. R. 101.9(c)(1). If the settlement agreement thus approved is a formal one, the agreement, the objections and the Regional Director's statement are submitted to the Board's general counsel who, if he approves the settlement, submits it to the Board, whose approval is necessary. The charging party has seven days to submit to the Board further objections to the settlement. 29 C. F. R. 101.9(c)(2).

Petitioners insisted, at the outset of settlement negotiations, that the Regional Director give them all evidence relating to the unfair labor practice charges, including the affidavits of prospective Board witnesses, and also permit them to participate in all settlement discussions with the Union. The Regional Director declined to do so, on the grounds that it would be contrary to customary Board procedure and would impair the integrity of the Board's investigative processes.

Petitioners then instituted a suit in the district court to enjoin the Regional Director from conducting settlement negotiations, or from receiving, accepting, or approving any settlement agreement without petitioners' participation and without disclosing to them all the evidence in the Board's files. The Board moved to dismiss the suit on the ground, *inter alia*, that the district court lacked jurisdiction over the subject matter, and, on July 30, 1970, the district court granted the Board's motion.

Meanwhile, the Union agreed with the Regional Director to enter into a formal settlement of the unfair labor practice case, whereby it waived filing an answer to the complaint and a hearing, and consented to the entry of an order by both the Board and the court of appeals enjoining it from engaging in the secondary activity alleged in the complaint. About August 5, 1970, after having been informally advised by petitioners that they would not join in the settlement, the Regional Director submitted a copy of the proposed settlement agreement to petitioners, and advised them that they could file written objections within five days and that he would consider such objections before making a final decision.

Petitioners appealed from the district court's order dismissing their suit to enjoin the settlement negotiations, and sought a restraining order pending the appeal. On

August 7, 1970, the court of appeals granted an *ex parte* restraining order. On reconsideration, however, the court on August 10 vacated the restraining order and extended to August 12 petitioner's time for filing objections to the settlement agreement with the Regional Director. Petitioners filed such objections.

We submit that the court of appeals properly exercised its discretion in denying a stay of the settlement proceedings, and that there is no occasion for a Justice of this Court to disturb that ruling.

1. Petitioners have not shown that irreparable injury would result if the settlement negotiations were permitted to proceed pending their appeal. Should the court of appeals reverse (which appears unlikely, see *infra*), the court could set aside any settlement agreement which had been concluded and require that the parties negotiate again. On the other hand, if the court of appeals ultimately sustains the district court's dismissal of petitioners' suit, a stay of the settlement proceedings would have impaired the policy of the Act favoring the prompt resolution of unfair labor practice questions, particularly those involving secondary boycotts (sec. 29 U. S. C. 160(1)).

2. It is unlikely that petitioners will prevail on their appeal. As noted, petitioners were served with a copy of the proposed formal settlement agreement and filed written objections thereto with the Regional Director. If the Regional Director approves the settlement, petitioners can appeal to the General Counsel. The settlement agreement, together with petitioners' objections, will be submitted to the Board itself, and petitioners will have an opportunity to file a further statement. If the Board ultimately approves the settlement, it will be embodied in a Board decision and order which petitioners can then challenge in the court of appeals. See *Textile Workers of America,*

*AFL-CIO* v. *National Labor Relations Board (Roselle Shoe Corp.)*, 294 F. 2d 738 (C. A. D. C.); *Local 282, International Bro. of Teamsters* v. *National Labor Relations Board* (J. J. White), 339 F. 2d 795 (C. A. 2).

Since petitioners will have a full opportunity to present their objections to the settlement itself or to the manner in which it was negotiated during the subsequent administrative and judicial stages of the proceeding, their attempt to circumvent this procedure by an equity suit in the district court is contrary to settled principles requiring exhaustion of administrative and statutory review procedures. *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41; *Aircraft and Diesel Equipment Corp.* v. *Hirsch*, 331 U. S. 753. Moreover, since the proposed settlement agreement provides for the entry of both a Board order and a court decree enjoining the Union from engaging in all the activity alleged to be unlawful in the complaint, it is difficult to see how petitioners could have any valid objection to the settlement; it gives them all that they could have obtained had the case been fully litigated.

The application for a stay should be denied.

Respectfully submitted,

Erwin N. Griswold,
*Solicitor General.*

August 1970.

(Filed August 14, 1970)

## APPENDIX T.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. .....

SEARS, ROEBUCK AND COMPANY,

and

TERMINAL FREIGHT COOPERATIVE ASSOCIATION,

and

TERMINAL FREIGHT HANDLING COMPANY,

*Appellants,*

*vs.*

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board,

*Appellee.*

### APPLICANTS' RESPONSE TO OPPOSING MEMORANDUM OF THE REGIONAL DIRECTOR.

Sears, Roebuck & Co., Terminal Freight Handling Company, and Terminal Freight Cooperative Association (Applicants herein) seek a temporary injunction enjoining the agents of the National Labor Relations Board from continuing to process a settlement agreement pending the determination by the Court of Appeals for the Eighth Cir-

cuit whether a district court has jurisdiction to review final actions of the Board's General Counsel which deny to aggrieved parties those rights necessary to ensure fundamental fairness and due process.[1]

The fundamental rights to which aggrieved charging parties are entitled are:

1. To participate *equally* with all other parties in the drawing of a settlement agreement.

2. To be entitled to know the factual basis of the complaint so that consideration can be given whether to include such facts in a proposed settlement agreement.[2]

Unless a temporary injunction is granted, suspending the Board's utilization of such proceedings, it will be virtually imposible for Applicants to bring to the Court's attention the basic iniquities of the Board's settlement procedures.[3]

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1. The Board's Motion for Summary Judgment was granted by the District Court's dismissal for want of jurisdiction. Consequently, the facts set forth in Applicants' "Complaint for Injunction" (Appendix A to the Application for Temporary Injunction) are, for the purposes of this proceeding, to be taken as true.

2. See: Letter and copy of "Appeal to the General Counsel" submitted to the Court on August 12, 1970. The filing of objections by Applicants with the Regional Director on August 12, 1970, contrary to the suggestion in the Government's response, increases the need for a temporary injunction, such objections having been filed only to preserve future rights of administrative appeal which would have been lost had Applicants not met the deadline established by the Board (and extended by the Eighth Circuit) for the filing of such objections. However, those objections and all future administrative appeals continue to deny the charging parties the factual information necessary to avoid a multiplicity of litigation, as the settlement agreement on its face violates § 10(c).

3. Over ninety percent of all unfair-labor practice charges are resolved by settlement under the Board's rules regarding settlement. As a consequence, aggrieved parties, whether they be employers, unions, or individuals, will continue to be denied procedural due process.

## I.

### Applicants Will Suffer Irreparable Harm Absent the Issuance of a Temporary Injunction.

In its Memorandum, the Government asserts that Applicants would not suffer irreparable injury from a continuation of the administrative proceedings pending appeal.[3a] We submit the following in response:

A. This court has stated in *United Automobile Workers v. Scofield (Fafnir Bearing Co.)*, 328 U. S. 250, that a clarification of the rights of charging parties in Board proceedings should occur at the earliest possible time to avoid a multiplicity of suits. The District Court complaint, herein, alleges the impropriety of the General Counsel's final denial[4] to Applicants of the rights to which they believe they, as parties, are entitled prior to administrative review of a proposed settlement agreement.

Applicants have been asked by the General Counsel's representative, the Regional Director, to set forth any objections they might have to the proposed settlement agreement. Applicants have been unable to do so because

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3a. The Government does not contend that it will suffer any injury from the requested temporary injunction.

4. Section 3(d) (29 U. S. C. § 153) specifically gives the General Counsel "final authority" with respect to "prosecution of such [unfair-labor practice] complaints before the Board." Clearly, preparation of a settlement agreement in lieu of a complaint is an integral part of the prosecutorial function. On July 17, 1970, Applicants filed an appeal with the General Counsel regarding the Regional Director's refusal to allow Applicants to participate in the settlement negotiations, or to have access to the facts solely in the possession of the Regional Director but necessary to be included in the settlement agreement to describe specifically both the alleged violations and the prescribed remedies. On July 22, 1970, the General Counsel denied their appeal. Thus, contrary to the Government's suggestion, Applicants have fully exhausted their administrative remedies.

the General Counsel has "finally" refused to furnish them with "facts" upon which meaningful objections could be based, *i.e.*, such facts describing the alleged violations. Moreover, such essential facts are totally absent from the present settlement agreement (Appendix D to the Application for Temporary Injunction). If the basic facts had been included, as Applicants seek in the District Court action below, the resultant settlement agreement would fulfill not only the remedial purposes of such settlement agreements (*i.e.*, to prevent a reoccurrence of identical conduct)[5] but, moreover, their mandatory requirements under § 10(c) (29 U. S. C. § 160). If the Eighth Circuit should agree to review the Board settlement,[6] upon the application of charging parties, the teachings of *Scofield, supra,* with respect to clarification of charging parties' rights at the earliest possible time, would thereby be disregarded. Review by the Eighth Circuit could only result

5. Contrary to the Government's contention, the settlement agreement is totally lacking in the desired remedial effect. Indeed, of what guidance would such a settlement be to either the Board, the District Court, or the Court of Appeals, should the Union resume its unlawful picketing at the warehouse jointly occupied by Sears, Roebuck and Co., the secondary employer, and the primary employer (Be-Rite Trucking Co.), the company with whom the Union had its dispute? As a matter of law, the only basis for the Board's issuance of a complaint with respect to this category of union conduct could be conversations and instructions given by the Union to its membership or other employees to cease handling any Sears merchandise, regardless of the disclaimers appearing on its picketing placards at this common situs. *The Teamsters Union (Wilson Teaming Co.)*, 140 NLRB No. 12 (1962).

6. Contrary to the Government's suggestion, the Eighth Circuit has not spoken on the subject. Only the Third Circuit has afforded full rights to aggrieved charging parties in similar circumstances. *Leeds & Northrup* v. *NLRB*, 357 F. 2d 627 (3rd Cir. 1966). The District of Columbia and Second Circuit cases cited in the Government's Memorandum (*Textile Workers of America* v. *NLRB*, 294 F. 2d 738 (D. C. Cir.); *Teamsters, Local 282* v. *NLRB*, 339 F. 2d 795 (2d Cir.)) contrary to the holding of *Leeds and Northrup, supra,* do not permit charging parties to have a hearing in which they can discover the requisite "facts."

in remand to the Board for inclusion of findings of fact, as required by § 10(c) (29 U. S. C. § 160).[7]

The settlement agreement in its present form must ultimately be rejected by the Court because, as above demonstrated, it is, on its face, violative of the mandatory language of § 10(c) (29 U. S. C. § 160). Should the Government be temporarily enjoined, the factual information sought by Applicants in the District Court could be incorporated into a settlement agreement which would cure the statutory deficiencies without requiring Applicants to embark on a circuitous path of administrative and Court review.

B. Irreparable harm will also fall upon Applicants as a result of the "no-man's land" created by this Court's decision in *Sears, Roebuck and Co.* v. *Local 419 Carpet Layers*, 397 U. S. 655 (1970). As a result of that decision, the Board's approval of a settlement herein prior to a resolution of Applicants' contentions will automatically remove the protection Applicants now have by virtue of the District Court's order in the § 10(l) proceeding.[8] Should the Eighth Circuit fail to approve the Board's settlement agreement and remand it to the Board for inclusion of facts necessary to comply with § 10(c) (29 U. S. C. § 160),[9] there would be no available remedy for Applicants

7. The proposed settlement agreement, on its face, is devoid of any facts going to the substantive violations involved. Thus, it is clearly violative of § 10(c) (29 U. S. C. § 160) which states that the Board "shall" make findings based upon the facts appearing in the record.

8. The U. S. District Court, Eastern District of Missouri, entered an order on July 9, 1970 in Case No. 70-C-317(2), under Section 10(l) of the Act (29 U. S. C. § 160) wherein the Union agreed to cease picketing pending final adjudication by the Board.

9. See footnote 7, *supra*.

in the event of the Union's resumption of the identical unlawful picketing at the identical locations.[10]

At this juncture the "no-man's land" is created. Section 10(l) (29 U. S. C. § 160) is no longer operative and the Board cannot petition for injunctive relief under § 10(e) (29 U. S. C. § 160) because that section specifically permits the Board to petition for interim injunctive relief *only ancillary to the enforcement of its final order.* There would, at that time, be no Board order upon which the Board could predicate any petition for temporary relief under § 10(e) (29 U. S. C. § 160).

## II.

### There Is Substantial Likelihood That the Eighth Circuit Court of Appeals Will Determine That a District Court Has Jurisdiction to Hear Applicants' Claim.

Jurisdiction to hear this complaint is conferred upon the District Court by virtue of 28 U. S. C. § 1337(m).[11]

*Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, cited by the Government, is inapposite. Contrary to the circumstances in *Myers,* Applicants claim that the statutory provisions—*i.e.*, their designation as "parties" and the rules and procedures governing the charging parties

10. Such a resumption of picketing cannot be said to be remote merely because the Unions have refrained from such activity pursuant to an interim order of the District Court entered in the § 10(l) proceedings as referred to at footnote 8, *supra. NLRB* v. *Mexia Textile Mills, Inc.*, 339 U. S. 563.

11. The decision of the District Court in *Industrial Workers Local 112* v. *Rothman,* 209 F. Supp. 295 (D. C. 1962) presents indistinguishable precedent as to the District Court's decision. Counsel has found no other case passing on this precise question. In *Rothman,* the District Court predicated its finding of jurisdiction on 28 U. S. C. § 1337 and this Court's decision in *Capitol Services, Inc. et al.* v. *NLRB,* 347 U. S. 501.

opportunity to present evidence solely within the control of the Government—do not afford them rights consistent with party status.[12]

## III.

### Conclusion.

WHEREFORE, for the foregoing reasons, as well as those set forth in the Application, it is respectfully requested that the Court issue a temporary injunction.[13]

Respectfully submitted,

GERARD C. SMETANA,
*Counsel: Sears, Roebuck & Co.,*

JERRY KRONENBERG,
*Counsel for Terminal Freight Handling Company and Terminal Freight Cooperative Association.*

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12. Mr. Justice Brandeis, in *Myers, supra*, stated, as an initial predicate for the Court's opinion:

> There is no claim by the Corporation [Bethlehem] that the statutory provisions and the rules of procedure prescribed for such hearings are illegal; or that the Corporation was not accorded ample opportunity to answer the complaint of the Board; or that opportunity to introduce evidence on the allegations made will be denied. The claim is that the provisions of the Act are not applicable to the Corporation's business. . . .

13. The Court need not find that the Court of Appeals committed an abuse of discretion in denying Applicants' request for stay. As this Court has recognized, a more compelling basis for grant of the requested temporary injunction is preservation of its ultimate jurisdiction by issuance of injunctive relief. 28 U. S. C. § 1651(a); *Johnson* v. *Stevenson*, 335 U. S. 801.

CERTIFICATE OF SERVICE.

I, Burt A. Braverman, an attorney in the law firm of Cole, Zylstra & Raywid, do hereby certify that copies of the foregoing were delivered by hand this 17th day of August, 1970 to the following:

Arnold Ordman, Esquire
General Counsel
National Labor Relations Board
Washington, D. C.

Hon. Erwin N. Griswold
Solicitor General of the United States
Washington, D. C.

/s/ BURT A. BRAVERMAN
Burt A. Braverman

# APPENDIX U.

## STATUTE INVOLVED.

National Labor Relations Act
(61 Stat. 136, 29 U. S. C. § 151, et seq.)

Sec. 10(h), 29 U. S. C. 161:

"h) When granting temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

(l) Whenever it is charged that any person has engaged in an unfair labor practice within the mean-

ing of paragraph (4) (A), (B), or (C) of section 8(b), or section 8(e) or section 8(b)(7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: *Provided further,* That such officer or regional attorney shall not apply for any restraining order under section 8(b)(7) if a charge against the employer under section 8(a)(2) has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization

(1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organizations a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D)."

# In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 781

SEARS, ROEBUCK AND CO., AND TERMINAL FREIGHT CO-OPERATIVE ASSOCIATION AND TERMINAL FREIGHT HANDLING CO., PETITIONERS

*v.*

JOSEPH H. SOLIEN, REGIONAL DIRECTOR OF THE FOURTEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

MEMORANDUM FOR RESPONDENT SOLIEN IN OPPOSITION

1. Petitioners filed charges with the Regional Director of the National Labor Relations Board alleging that the respondent Union was engaging in a secondary boycott in violation of Section 8(b)(4)(B) (29 U.S.C. 158(b)(4)(B)) of the National Labor Relations Act. Upon determining that a complaint should issue on the charges, the Regional Director petitioned the United States District Court for the Eastern Dis-



603-606—70

trict of Missouri for an injunction against the Union's activity, pursuant to Section 10(l) (29 U.S.C. 160(l)) of the Act. Before the date set for hearing on the injunction, the Regional Director and the Union entered into a stipulation for a cessation of the Union's alleged secondary activity pending a final determination of the charges by the Board. The stipulation further provided for the entry of a temporary injunction if the stipulation were violated. The district court, after considering petitioners' objections that the stipulation provided inadequate protection, issued an order approving the stipulation with some modification. (Pet. App. 44–47, 51, 62.)

Shortly after the filing of the injunction petition, petitioners moved to appear as full parties litigant, or to intervene, in the Section 10(l) proceeding (Pet. App. 28–33). The district court denied these motions (Pet. App. 59), and petitioners have appealed this ruling to the court of appeals (Pet. App. 64–67). Petitioners seek immediate review of that ruling by this Court, prior to consideration of the issue by the court of appeals.

2. Petitioners have not shown, as Rule 20 of the Rules of this Court requires for certiorari before judgment in the court of appeals, that this case "is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this court." *First*, the issue itself does not meet that standard. *Second*, the reason which petitioners give for bypassing the court

of appeals no longer exists.[1] *Finally*, a stipulation has been approved by the district court which effectively stops the Union's alleged secondary activity pending the completion of the main Board unfair labor practice proceeding. That proceeding is approaching completion, since the Union has agreed with the Regional Director to enter into a formal settlement of the unfair labor practice case, and has consented to the entry of an order by both the Board and the court of appeals enjoining it from engaging in the secondary activity alleged in the complaint (Pet. App. 68–80, 101).[2] The settlement agreement has been submitted to the General Counsel for approval. See 29 C.F.R. Sec. 101.9(c)(2). Under these circumstances, the case is not an appropriate one in which to review the issue which petitioners raise. See *Terminal Freight Cooperative Assoc.* v. *Samoff*, No. 1481, 1969 Term, certiorari denied, 398 U.S. 965; cf. *Sears Roebuck & Co.* v. *Carpet Layers, Local 419*, 397 U.S. 655.

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[1] Petitioners contend (Pet. 11) that certiorari before judgment is appropriate because a similar issue is presented by the petition for certiorari in *The Los Angeles Herald Examiner, et al.* v. *Kennedy*, No. 350, 1970 Term. However, as pointed out in respondent Kennedy's supplemental memorandum, the issue presented in that case is now moot as a result of the issuance of the Board decision and order in the underlying unfair labor practice proceeding. *Los Angeles Guild, Local 69, et al.*, 185 NLRB No. 25, August 27, 1970. See *Sears, Roebuck & Co.* v. *Carpet Layers, Local 419*, 397 U.S. 655.

[2] Petitioners brought suit in the district court to enjoin the settlement negotiations, which suit was dismissed on jurisdictional grounds (Pet. App. 89–99). A stay of that decision was denied by both the court of appeals (Pet. App. 102), and Mr. Justice Blackmun (*Sears, Roebuck and Co.* v. *Solien*, 1970 Term, application denied August 19, 1970).

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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ARNOLD ORDMAN,
*General Counsel,*
*National Labor Relations Board.*

OCTOBER 1970.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1970

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No. 781

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SEARS, ROEBUCK AND CO.,

and

TERMINAL FREIGHT COOPERATIVE ASSOCIATION AND TERMINAL FREIGHT HANDLING CO., *Petitioners*,

v.

JOSEPH H. SOLIEN, REGIONAL DIRECTOR OF THE FOURTEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,

and

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondents*.

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**On Petition for Writ of Certiorari Before Judgment to the United States Court of Appeals for the Eighth Circuit**

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## BRIEF AMICUS CURIAE ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT

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### INTEREST OF THE AMICUS CURIAE*

The Chamber of Commerce of the United States of America is a federation consisting of a membership of over 3,700 state and local chambers of commerce and

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* This brief is filed with the written consent of all parties pursuant to Supreme Court Rule 42(2).

trade associations, with an underlying membership of approximately 5,000,000 business firms and individuals and a direct business membership in excess of 38,000. It is the largest association of business and professional organizations in the United States.

The National Chamber has previously submitted its views with respect to the issue involving this case, the rights of charging parties to participate in an injunction proceeding under Section 10(L) of the National Labor Relations Act, in *The Los Angeles Herald-Examiner, et al.* v. *Kennedy*, No. 350, this term. The subsequent grant of the petition for writ of certiorari in that case, coupled with the acceptance of a similar petition last term in *Sears, Roebuck and Co.* v. *Local 419, Carpet Layers*, 397 U.S. 655, indicates this Court's awareness of the importance of defining the status of a charging party in a 10(L) case.

The problem here presented is thus a substantial and recurring one,[1] and one which has to date escaped review by this Court by reason of a technical application of the mootness doctrine. The National Chamber believes that the instant case now presents an appropriate vehicle for this Court to provide the necessary guidance. If a large national enterprise such as Sears, Roebuck and Co., exercising all possible diligence and expedition (See Petition, footnote 7), is repeatedly frustrated in its attempt to obtain review by this Court, there is surely little hope for the countless thousands of similarly-situated small employers throughout the

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[1] Of the total unfair labor practice charges filed against unions under Section 8(b) of the Act during NLRB fiscal years 1967 and 1968, *32 per cent, or nearly 3700 charges*, involved alleged violations of the secondary boycott provisions of Section 8(b)(4). *Thirty-second Annual Report of the National Labor Relations Board*, p. 218 (1967); *Summary of Operations of NLRB General Counsel*, reprinted in 70 LRR 459 at 468 (1969).

nation who cannot pursue as actively such litigation.[2] This case has not yet been rendered moot, and the critical issue involved remains a viable one raised in an appropriate posture for review by this Court. This case, therefore, presents the situation contemplated by Rule 20 of this Court for the grant of a writ of certiorari before judgment: a matter of such imperative public importance as to justify a deviation from normal appellate processes and to require immediate settlement by this Court. There is no need here to await the decision of the Court of Appeals; the merits of the matters at issue have already been extensively argued to this Court. See Petition, pp. 9-11.

## REASONS FOR GRANTING THE WRIT

### A. The Present Case Raises Significant Issues Regarding the Administration of the Act Which Should Be Resolved by This Court in the Exercise of Its "General Power To Supervise the Administration of Justice in the Federal Courts." Western Pacific R. Corp. v. Western Pacific R. Co., 345 U.S. 247, 260.

Congress has recognized that the secondary boycott is a vicious and devastating economic weapon;[3] it is destructive to the free flow of commerce and places the neutral employer in grave jeopardy of losing all or part of his established business. Accordingly, Congress not only outlawed such conduct, but provided an immediate remedy for the protection of the victimized employer by the enactment of Section 10(L) of the National Labor Relations Act, 29 U.S.C. § 160(e).

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[2] Over 50% of all charges involving Section 10(L) in 1959 were filed by small employers with less than 30 employees. *Thirty-third Annual Report of the National Labor Relations Board*, Table 18, pp. 238-9, *supra*.

[3] See, e.g., II *Legislative History of the Labor-Management Reporting Act of 1959*, pps. 989, 1376, 1425, 1446, 1842 (1959); Senate Report No. 105, 80th Cong., 1st Sess. (1947).

This provision particularly reflects the sense of grave congressional concern that such conduct be terminated. Unlike other provisions of the federal laws, this section:

1. Commands the Board to give the investigation of such charges immediate priority over all other charges, and

2. Orders the Board, without exception or allowance for discretion, to petition a federal district court for temporary injunctive relief pending final adjudication upon a showing of reasonable cause to support the merits of the charge.

Indeed, the protection afforded by temporary injunctive proceedings under Section 10(L) constitutes the *only* effective bulwark available to employers subjected to unlawful union recognitional picketing, improper "hot-cargo" agreements and illegal secondary boycotts.[4]

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[4] The protection afforded by a permanent injunction to an employer unlawfully picketed is more illusory than real. The length of time required for the Board to investigate the employer's charge and to issue a complaint, for the Board Trial Examiner and the Board itself to then rule on the complaint and, subsequently, for a court of appeals to enforce any resultant Board order, largely negates the value to the picketed employer of such a proceeding. In *Sears, supra*, for example, the union commenced its picketing on August 7, 1968; only recently, however, did the District of Columbia Court of Appeals issue its order remanding the case back to the Board for additional findings. *Carpet Layers Local 419* v. *N.L.R.B. (Sears, Roebuck & Co.)*, — F. 2d —, 74 LRRM 2444 (D.C.Cir., 1970). Thus far, in excess of two years have elapsed with the legality of the underlying dispute still unresolved. Few employers could withstand unlawful picketing of such a duration. Nor can it be said that the delay involved in the *Sears* case presents the unusual situation. See footnote 8 at page 10 of the Petition for Rehearing in *Sears, supra*.

In the face of such a clear congressional purpose, any erosion of the effectiveness of the Section 10(L) remedy cannot be sanctioned. Yet this will be the result of the failure to accord charging parties the status of full "parties", or to permit their right of intervention, in Section 10(L) proceedings. This Court has acknowledged the necessity for conferring such status upon charging parties in proceedings under other provisions of the Act. See, e.g., *United Automobile Workers* v. *Scofield*, 382 U.S. 205. A similar role, as Petitioners suggest, is also contemplated by the Judicial Review Act, 5 U.S.C. § 1038.[5] And a recognition that important private rights, not merely generalized "public rights", are at stake is particularly critical in a 10(L) proceeding where, once the government has instituted suit, the interest of the neutral employer—the strong self-interest of preserving his business—assures the most vigorous pursuit of the injunctive remedy to halt the unlawful picketing.

This Court has determined that "both the successful charged party (in *Scofield*) and the successful charging party (in *Fafnir*) have a right to intervene in a Court of Appeals proceeding which reviews or enforces Labor Board orders." *United Auto Workers* v. *Scofield*, 382 U.S. at 208. This Court has not, however, determined the corollary and equally important extent to which charging parties may participate in proceedings instituted by the Board for temporary injunctive relief or may participate in subsequent appellate review in such proceedings. Accordingly, numerous and

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[5] See also this Court's recent sensitivity to the rights of private parties in administrative proceedings generally, as expressed in *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U.S. 150 and *Barlow* v. *Collins*, 397 U.S. 159.

divergent rulings have emerged from the courts of appeal concerning this and related questions.[6] Such conflicts, involving significant issues in the administration of the Act, should be resolved by this Court in the exercise of its "general power to supervise the administration of justice in the Federal Courts." *Western Pacific R. Corp.* v. *Western Pacific R. Co.*, 345 U.S. 247, 260.

**B. The Decision of the District Court Hinders the Public Interest by Suppressing Evidence and Argument Before the Courts in 10(L) Proceedings.**

If the decision of the District Court here is allowed to stand, one of the essential objectives of the Act will be frustrated to the detriment of the public interest. Congress entrusted the keys of the closely-guarded labor injunction to the federal district courts in much the same fashion that enforcement of Board orders was reposed in the courts of appeal. That grant of judicial authority was predicated upon the explicit premise that all parties would have unrestricted opportunity to inform the court, by evidence and argument, of all relevant considerations in a given case. This division of responsibility was acknowledged by the Board and expressly recognized by the Court in *Scofield* where it was stated:

> "In fact, the Labor Board itself agrees that intervention by charged parties will not impair

[6] To give one example: in contrast to the ruling of the District Court here, the Ninth Circuit has affirmed the issuance of an injunction under Section 10(L) at the urging of the charging party and over the objection of the Board where the charging party "merely supported the original petition for injunctive relief requested by the Regional Director". *Retail Clerk's Union, Local 137, et al.* v. *Food Employers Council, Inc.*, 351 F. 2d 525 9th Cir., 1965).

> effective discharge of its duties and may well promote the public interest . . . Participation in defining the issues before the court guarantees that all relevant material is brought to its attention, and makes the briefs on the merits more meaningful."

There can be no logical reason for applying the *Scofield* doctrine to one stage of an unfair labor practice proceeding but refusing, as did the District Court, to apply it to closely-related injunction sections. If anything, the more logical postulate is that Congress wanted the fullest possible exposure of facts and arguments in light of the limited time available to the court for consideration of its ruling in a 10(L) proceeding and the overriding concern of Congress regarding the need for relief for such violations. Thus, the decision of the District Court denying the charging party either the status of a "party" or the right of intervention is clearly contrary to the public interest facet of the statutory scheme and, accordingly, review by this Court is fully warranted.

### C. The Decision of the District Court Departs from the Better-Reasoned Precedent.

The decision of the Ninth Circuit Court of Appeals in *Retail Clerk's Union, Local 137, et al.* v. *Food Employers Council, Inc.*, 351 F.2d 525 (9th Cir., 1965), fully and logically supports the position of the Petitioners here. In that decision, the court reasoned that, since the charging party was only attempting to "support the position of the Regional Director" and was not seeking to "initiate the litigation," the Norris-LaGuardia Act presented no obstacle. Here also, Petitioners are merely seeking to support the position of the Regional Director who has initiated the appeal and

the Norris-LaGuardia Act should not be read as obstructing such participation.

Review is warranted here for the additional reason that, as this Court held last term in *Boys Markets, Inc.* v. *Retail Clerk's Union, Local 770,* 398 U.S. 235, the earlier enacted provisions of the Norris-LaGuardia Act must be accommodated to the subsequent amendments to the National Labor Relations Act. In enacting Section 10(L), Congress expressed a clear purpose of protecting the neutral employer from the disruptive effects of unlawful union picketing. The participatory rights granted neutral employers by the explicit terms of Section 10(L) reflects the judgment of Congress that the prosecutorial efforts of the Board's General Counsel alone would not guarantee such protection. As in *Boys Markets,* the earlier enacted provisions of the Norris-LaGuardia Act cannot be interpreted here as contravening this clear congressional objection by stifling the neutral employer's right to participate at all stages of 10(L) injunctive proceedings. Rather, as the Court said in *Boys Markets,* it is "the task of the courts to accommodate, to reconcile the older statutes with the more recent ones." The District Court failed to reach such an accommodation, and, accordingly, review by this Court is now necessary.

## CONCLUSION

For the foregoing reasons, as well as for those urged by the Petitioner, the National Chamber urges this Court to grant the petition for a Writ of Certiorari Before Judgment.

Respectfully submitted,

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1970.

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**No. 781.**

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SEARS, ROEBUCK AND CO.,

AND

TERMINAL FREIGHT COOPERATIVE ASSOCIATION AND TERMINAL FREIGHT HANDLING CO.,

*Petitioners,*

*vs.*

JOSEPH H. SOLIEN, REGIONAL DIRECTOR OF THE FOURTEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,

AND

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

*Respondents.*

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ON PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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## RESPONSE OF PETITIONERS TO MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT.

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The Memorandum of Respondent Solien In Opposition argues that this case does not meet the criteria established by Rule 20 of this Court for a writ of certiorari before

judgment. The reasons advanced to support this contention, however, contain serious error:

1. The instant petition is premised on the frequency with which this significant matter has been presented to this Court,[1] and this Court's resultant familiarity with the underlying considerations (Petition, pp. 9-11). In addition, the question here presented is one of paramount public importance as evidenced by the grant of the petitions for writ of certiorari in *The Los Angeles Herald-Examiner, et al.* v. *Kennedy*, ..... U. S. ....., 75 LRRM 2379, and *Sears, Roebuck and Co.* v. *Local 419, Carpet Layers*, 397 U. S. 655, and the brief that has been filed in this case by the Chamber of Commerce of the United States as *amicus curiae*. In these circumstances, contrary to the assertion of the Memorandum In Opposition (p. 2), the standards of Rule 20 have been fully met.

2. This Court's decision in *The Los Angeles Herald-Examiner*—granting the petition for writ of certiorari, vacating the judgment of the court of appeals which had denied the charging parties there involved intervention and appellate rights in a 10(l) proceeding, and directing the court of appeals to dismiss the case as moot on the basis of *Sears*—underscores, rather than denigrates, the need for the Court to grant the instant petition. For that decision once more cogently illustrates how resolution of the critical questions here involved can be frustrated by an intervening Board decision, a fate likely to befall the present case, notwithstanding the considerable diligence

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1. Within the past two years, this Court has been requested to determine the status of charging parties in proceedings under Section 10(1) of the National Labor Relations Act in *San Francisco-Oakland Newspaper Guild, et al.* v. *Kennedy*, 393 U. S. 936; *Sears, Roebuck and Co.* v. *Local 419, Carpet Layers*, 397 U. S. 655; *Terminal Freight Cooperative Association, et al.* v. *Samoff*, ..... U. S. ....., 90 S. Ct. 2171; *The Los Angeles Herald-Examiner, et al.* v. *Kennedy*, ..... U. S. ....., 75 LRRM 2379; as well as in the instant case.

of Petitioner (Petition, note 7), if the present petition is not granted. In fact, the likelihood of such a development is urged by the Memorandum In Opposition (p. 3) as the basis for finding that this case "is not an appropriate one in which to review the issue which petitioners raise." Yet, if this case does not constitute an appropriate vehicle, the important issues of this case will *never* be in an adequate posture for resolution by this Court. It is precisely because of this perpetual barrier to final resolution of such issues, as demonstrated again in *The Los Angeles Herald-Examiner*, that, contrary to the assertion of the Memorandum In Opposition (pp. 2-3), there continues to exist compelling reason, as contemplated by Rule 20, to deviate from normal appellate processes.

3. The Memorandum In Opposition (p. 3) is also in error when it alleges that the stipulation approved by the district court "effectively stops the Union's alleged secondary activity pending the completion of the main Board unfair labor practice proceeding." Indeed, it is the lack of adequate protection which is the *raison d'etre* of this case. Petitioners seek to be recognized as "parties," or to be permitted to intervene in the 10(l) proceeding, solely so that they can obtain a remedy which, in fact, "effectively stops" the Union's unlawful conduct, *viz.*, a statutorily-specified injunction rather than the informal, incomplete, non-self-enforcing stipulation sanction by the district court. See Petition, pp. 7-9; Appendices to Petition H and I.

4. Finally, the Memorandum in Opposition (p. 3) is incorrect in its assertion that the underlying Board case "is approaching completion . . ." While it is true that the proposed Union-Regional Director unilateral settlement of that case has now been submitted to the General Counsel for approval, that agreement does not become final until subsequently approved by the Board itself. The General Counsel acts only in an *advisory* capacity where, as here, a

formal settlement of the unfair labor practice case is involved. 29 C. F. R. Sec. 101.9(b). Moreover, at the present juncture of the main Board proceeding, the General Counsel has not even ruled on Petitioner's substantial objections to the proffered settlement[2] nor determined whether he will recommend its approval by the Board.[3]

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2. The Petitioners' opposition is based principally on (1) the failure to provide adequate information upon which to judge whether all substantive violations have been remedied; (2) the failure to afford any opportunity to Petitioners to participate in the negotiation and drafting of the proposed settlement; and (3) the omission in the settlement of findings of fact such as are required by Section 10(c) of the Act and without which it is impossible to determine whether any resumption of the Union's picketing would violate the presumed proscriptions of the settlement. See Petition, pp. 7-9.

3. The General Counsel now has pending before him, prerequisite to his determination of whether to grant such approval, a request by Petitioners for leave to file supplemental objections to the proposed settlement and to argue orally in support of their position. It is not known when a ruling will be made on this request or a date set for oral argument.